



If you have questions regarding this e-lerc, please contact one of the Venable lawyers with whom you work.

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The E-Verify Mandate Has Arrived: It's Time For Federal Contractors To Comply

A federal court in Maryland has upheld [the U.S. Government's new mandatory "E-Verify" rule](#). While an appeal has been filed, the appeals court today denied requests for delay of the new rule. Therefore, effective September 8, 2009, the rule requires federal agencies to insert a new clause into most government contracts which will require government contractors to use the E-Verify system administered by the U.S. Citizenship and Immigration Service (USCIS) to confirm that their employees are lawfully authorized to work in the United States. Government contractors should act now to address a host of compliance issues. Here are answers to the most common questions we are hearing from our clients about compliance with the new E-Verify rule:

Q: What is E-Verify?

A: E-Verify is an Internet-based system operated by the USCIS, which provides an automated link to federal databases to help employers determine the work eligibility of new hires and the validity of Social Security numbers once employees have completed a Form I-9 for the employer. The program is free to employers and, until now, was completely voluntary, with approximately 92,000 employers participating already.

Q: What is the main impact of the new rule?

A: The new rule for the first time will **require** most federal contractors to enroll in E-Verify, once the new clause is added to their government contracts. The new clause will require that **all new hires** of such contractors be checked through the E-Verify program. Finally, the new rule for the first time will require that **existing employees** of such contractors be checked through E-Verify if they are "assigned" to a covered contract.

Q: Which federal contracts will be subject to E-Verify as of September 8?

A: The E-Verify requirement will be included in federal contracts awarded, and solicitations issued, after September 8, 2009 with a value of more than \$100,000 and a period of performance longer than 120 days. Subcontractors on a covered contract who are providing services or construction with a value of more than \$3,000 must also participate in E-Verify. Existing indefinite delivery or indefinite quantity contracts will be amended to include the requirement for future orders if the remaining period of performance extends at least six months beyond the September 8 effective date.

Q: What does the new rule require federal contractors to do?

A: The rule amends the Federal Acquisition Regulation (FAR) to require covered contractors to use the Government's electronic E-Verify system to confirm the employment eligibility of **all new hires during the contract term** (whether or not they work on the covered contract). Furthermore, although employers who voluntarily used the system were previously prohibited from using it to check the employment eligibility of employees hired before registration with E-Verify, the new rule will now require government contractors to verify the employment eligibility of **all existing employees who are assigned to work on a covered federal contract**.

Q: Are there any exceptions?

A: Contracts under \$100,000 are not covered; nor are subcontracts under \$3,000. Contracts for commercially available off the shelf (COTS) items are not covered. Employees working outside the U.S. are not covered. Employees who have federal agency and U.S. government security clearances may be excluded as well. Finally, a few entities are allowed to choose to only use E-Verify on new and existing employees assigned to a covered federal contract, avoiding use of E-Verify for all new hires. This exception applies only to institutions of higher learning, state and local governments, governments of federally recognized Indian tribes and sureties operating under a federal agency performance bond.

Q: When do federal contractors need to start verifying their employees?

A: Contractors who have not previously participated in E-Verify will be required to enroll within 30 calendar days after award of a covered contract that contains the new requirement. The contractors must then begin using the system to confirm the employment eligibility for all new hires within 90 calendar days after enrollment in E-

Verify and, for all other employees assigned to work on the contract, within either 90 calendar days after enrollment or 30 calendar days after the employee is assigned to the contract, whichever is later.

Q: What if our Company is already enrolled in E-Verify?

A: Contractors who are already enrolled in E-Verify should update their profile if and when they are awarded a government contract that contains the new E-Verify clause. Such contractors who have been enrolled for at least 90 calendar days must begin using E-Verify to verify employment eligibility immediately for all new hires and, for all other employees assigned to work on the contract, within 30 calendar days after the employee is assigned to the contract. Contractors who are enrolled in E-Verify but have been enrolled for less than 90 calendar days at the time of contract award must begin using the system to verify the eligibility of new hires within 90 calendar days after enrollment in E-Verify and, for all other employees assigned to the contract, within either 90 calendar days after the contractor enrolls in E-Verify or 30 calendar days after the employee is assigned to the contract, whichever is later.

Q: Is there any chance of further delay in implementing the new rule?

A: Only an act of Congress would delay the new rule, and that is considered extremely unlikely.

Q: What should contractors do to get ready for the new E-Verify rule?

A: Because the E-Verify requirements will be different for contractors who are working on covered government contracts and those who are not, contractors may want to wait until the E-Verify clause is added to their government contracts before enrolling. Contractors should go to the [E-Verify website](#) now to become familiar with the registration process. Contractors should also establish internal procedures to incorporate E-Verify into the hiring process and train the necessary personnel. Contractors should also identify those employees who are likely to be “assigned” to covered federal contracts, and establish internal procedures to apply E-Verify to all such workers. Finally, now is a good time to review existing I-9 records and employment eligibility verification practices to ensure compliance with immigration laws.

Q: How can Venable help?

A: Venable attorneys are experienced in all aspects of the employment verification process. We have already advised many of our government contractor clients on compliance issues. Through the joint efforts of Venable’s Labor and Employment and Government Contracts practice groups, we have closely monitored the E-Verify rulemaking process and are familiar with what contractors need to do to comply with the new rule. We are experienced in defending government contractors against compliance audits and litigation.

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