

One Minute Memo[®]



Federal Contractors to be Required to Use E-Verify

On June 6, 2008, President Bush signed Executive Order 13465 requiring federal government contractors to use E-Verify to confirm the employment eligibility of employees who perform work on contracts within the United States. On June 12, 2008, the federal government issued proposed regulations to implement the Executive Order. E-Verify is the federal government's online verification system that uses Social Security Administration and Department of Homeland Security databases to verify that an employee is authorized to work in the United States.

The Executive Order and proposed regulations will require that, as a condition of receiving a federal government contract, the contractor must use E-Verify to confirm the employment eligibility of all new hires in the United States during the contract term, regardless of whether they are hired to work under the government contract. The contractor will also be required to use E-Verify to confirm the employment eligibility of all current employees assigned to perform work under the government contract. E-Verify currently allows employers to confirm the employment eligibility of new hires only, and forbids use of the system for existing employees. However, the E-Verify rules will be changed to also allow contractors to use E-Verify for current employees who are assigned to perform work under a federal contract.

The Executive Order will not apply retroactively. Only those contractors who enter into new contracts with the federal government will be subject to the new requirement. The proposed regulations exempt from the employment eligibility verification requirement contracts valued at less than the Micro-Purchase Threshold (currently \$3,000) and contracts for Commercial Off-The-Shelf (COTS) items. The proposed regulations require prime contractors to flow-down the employment verification requirement in subcontracts for commercial or noncommercial services, including construction, that exceed the Micro-Purchase Threshold, but not in subcontracts for material.

Under the proposed regulations, entities that contract with the federal government must agree to enroll in and begin to use E-Verify within 30 days of contract award. Following the initial 30-day period, the employment eligibility of all new hires during the contract term and all existing employees who are assigned to the contract must be verified within three days of hire or assignment.

The proposed regulations implementing the Executive Order are not yet effective. Final regulations will be issued after the government reviews comments received during the 60-day comment period, which ends on August 11, 2008. Government contractors can prepare for

compliance by learning about E-Verify and by registering for and beginning to use E-Verify.

With both government contracts attorneys and a team with extensive experience providing workforce authorization solutions, Seyfarth Shaw is uniquely qualified to help federal government contractors understand and comply with the new employment eligibility verification requirements.

For more information about the E-Verify system, state laws relating to E-Verify, or other workforce authorization matters, contact your Seyfarth Shaw attorney or any immigration attorney on our website, www.seyfarth.com/Immigration. For information on federal government contract compliance issues, contact your Seyfarth Shaw attorney or any government contracts attorney on our website, www.seyfarth.com/Government. We stand ready to assist you.

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