

E-Verify for Federal Contractors

David C. Whitlock

Elarbee Thompson

404-582-8468

whitlock@elarbeethompson.com

Federal Contractor Rule

- President Bush signed amendment to Executive Order 12989 on June 6, 2008
- Requires federal government to contract only with entities taking steps to avoid employment of illegal workers
- DHS designated E-Verify as “the” appropriate step for contractors to take
- Federal Acquisition Council issues proposed rule on June 12, 2008



Federal Contractor Rule

- Final rule published by Department of Defense, General Services Administration, and NASA on November 14, 2008
- Rule applies to contracts entered into, extended, or amended on or after September 8, 2009 with performance terms lasting more than 120 days
- Rule requires federal contracting officer to insist upon inclusion of contract language requiring contractor to enroll in, and use, E-Verify for all new hires Company-wide AND for existing employees working in direct support of the federal contract

Federal Contractor Rule

- Federal contracting officer is to “*negotiate*” the addition of the E-Verify language in existing indefinite-delivery, indefinite-quantity (IDIQ) contracts
 - Applies if there is substantial performance remaining under contract, and
 - Period of performance extends until at least six months after rule takes effect.



Federal Contractor Rule

- “Contractor” is any entity providing >\$100,000 in goods or services to federal entity
 - Compare to \$50,000 threshold for requirement to prepare written affirmative action plans
- Exclusion for Commercial Off-the-Shelf (“COTS”) products that do not require substantial modification
- Contractors must require subcontractors to comply
- “Subcontractor” is any entity providing >\$3,000 in services or construction in support of the prime contractor



Federal Contractor Rule

- Contractors not already enrolled in E-Verify will have 30 days from contract execution to enroll and another 90 days from enrollment to begin verifying new hires
- Contractors already enrolled in E-Verify for more than 90 days, must verify new hires within three days
- Contractors enrolled for less than 90 days must begin to verify new hires within 90 days from date of enrollment as federal contractor
- All contractors must verify existing workers assigned to the contract within 90 days after enrollment or 30 days after the worker is assigned to the contract, whichever is later
- Note: Compliance deadlines are triggered by execution of contract



Who Must be Verified?

- All new hires Company-wide if working in the US
- Existing workers “assigned to the contract”
 - Excludes support personnel in indirect or overhead functions not performing substantial duties in support of the contract
 - Institutions of higher education, state and local governments, recognized Native American tribes, and sureties performing under a takeover agreement do not have to verify all new hires but only those working directly on the federal contract
 - Persons with security clearances are exempt



Who Must be Verified?

- For employers that would have difficulty making determination of which employees are assigned to the contract, employer can choose “all workers” option
- Employer must complete verification within 180 days of enrollment, or if already enrolled, within 180 days of making the election
- This option does not apply to persons hired prior to November 6, 1986 since they are exempt from verification requirements
- Employees that have been verified in the past should not be verified again through E-Verify, although the employer may have an I-9 reverification duty triggered by expiring documents



DHS Describes E-Verify

- No-cost Internet based system
- Fast & easy to use
- Electronically verifies the employment eligibility of
 - Newly hired employees
 - Existing employees assigned to work on a qualifying Federal contract
- Helps maintain a legal workforce
- Protects jobs for authorized workers
- Partnership between the U.S. Department of Homeland Security and the Social Security Administration

Dave Says:

- No-cost Internet based system **Hidden costs.**
- Fast & easy to use **Again, and again, and again.**
- Electronically verifies the employment eligibility of
 - Newly hired employees
 - Existing employees assigned to work on a qualifying Federal contract
- Helps maintain a legal workforce **But allows ID fraud.**
- Protects jobs for authorized workers **If you can find 'em.**
- Partnership between the U.S. Department of Homeland Security and the Social Security Administration

DHS Federal Contractor Handbook

- **How to enroll . . .**
- **Go to www.dhs.gov/E-Verify. Under “Start Here” click on “Enroll in E-Verify”**
- **Follow instructions**

DHS Federal Contractor Handbook

How to Enroll (con't.)

- Electronically sign a Memorandum of Understanding (MOU) with DHS and SSA
- User Name, Password, and E-Verify Web Address will be e-mailed to you within 48 hours
- Download and read the *E-Verify User Manual for Federal Contractors* and the *E-Verify Supplemental Guide for Federal Contractors*
- Complete an online tutorial before creating cases

How to Handle I-9 Forms (according to DHS)

- **Option I: Complete new I-9 for all employees who will be run in E-Verify**
- **Option II: Complete new I-9 when required and update existing I-9 when allowed**

Complete a new I-9 when . . .

- The employee presented an expired document on a previous Form I-9 that allowed for such documents
- The employee presented an unexpired Form I-551 or U.S. passport on a previous Form I-9 and that document has since expired, and his or her employment authorization is still current, but you do not have a photocopy of the document
- Employment authorization as stated in Section 1 has expired
- The List B document previously submitted did not have a photo or you are unable to determine if it had a photo

Complete a new I-9 when . . .

- The employee is a Noncitizen National and was unable to separately attest to that status on a previous Form I-9
- The employee presented a document such as a Certificate of Naturalization or Form I-688 that was acceptable at the time of completion of the previous Form I-9, but is no longer acceptable
- The employee's immigration status has changed
- The employee's name has changed
- The previous Form I-9 did not conform to I-9 requirements at time of completion

Complete a new I-9 when . . .

- If your employee...
 - ...presented an ***unexpired*** Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document) or U.S. passport or U.S. passport card and it is still unexpired, photocopy the document & keep it with the employee's Form I-9
 - ...did not provide his or her Social Security Number (SSN) or if the employee claims that the number was changed by SSA, the employee should update Section 1 with the current SSN

Complete a new I-9 when . . .

- If your employee...
 - ...indicates his or her Alien number has been changed by the DHS, update Section 1 with the current Alien number
 - ...presented an unexpired Form I-551 or U.S. Passport on a previous Form I-9 & the document has since expired, his or her employment authorization is still current and you have a photocopy of the document you may not request that the employee present an unexpired version of either document. However, a new Form I-9 may be completed

Complete a new I-9 when . . .

- If your employee...
 - ...presented an unexpired List B document on a previous Form I-9 and that document has since expired, you do not need to request a new version to update a previously completed Form I-9. Such List B documents include state-issued driver's licenses or military ID cards

*** Treat all employees consistently when updating a previously completed Form I-9. Requesting a specific document on the basis of someone's citizenship status or national origin may violate the anti-discrimination provision of the Immigration and Nationality Act or Title VII of the Civil Rights Act of 1964 ***

States Requiring Use of E-Verify

- Requirement limited to new hires
- Required for all (or nearly all) employers:
 - Arizona Georgia Utah Tennessee
 - Mississippi Alabama Louisiana
 - South Carolina North Carolina
- Required for state contractors:
 - Colorado
 - Florida
 - Idaho
 - Minnesota
 - Missouri
 - Nebraska
 - Oklahoma
 - Rhode Island

Questions???

Thank You

David C. Whitlock

Elarbee Thompson

Atlanta, GA

404-582-8468

whitlock@elarbeethompson.com