

PUBLICATION

E-Verify for Federal Contractors

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E-Verify is a voluntary program for most employers, but mandatory for some, such as employers with federal contracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause. Executive Order 12989 requires federal agencies to include in federal government contracts a requirement for vendors to use E-Verify.

What is E-Verify?

E-Verify is a free web-based service providing electronic verification of employment authorization. It compares data provided on an employee's Form I-9, Employment Eligibility Verification, to data from the U.S. Department of Homeland Security (DHS) and Social Security Administration (SSA) records.

The first step in the E-Verify process is a completed Form I-9. The employer enters the information on the I-9 into E-Verify and will receive one of the following case results: (1) Employment Authorized, (2) Tentative Nonconfirmation (TNC), or (3) DHS Verification in Process.

Employment Authorized means the employee's employment eligibility was confirmed and that information entered into E-Verify matched records available to DHS and/or SSA. The case then needs to be closed. TNC means the information entered into E-Verify differs from records available to DHS and/or SSA. The TNC could be the result of something minor, such as an employee getting married and updating his or her Social Security Number and the employer should continue to check E-Verify periodically for updates. The result of DHS Verification in Process means that the information did not match records available to DHS. The case is automatically referred to DHS for further verification and DHS will respond to most of these cases within 24 hours.

Note that employers must not use E-Verify to pre-screen an applicant for employment or take adverse action against an employee based on a case result, unless E-Verify issues a Final Nonconfirmation. For example, employers should not terminate an employee during the E-Verify verification process because the employee receives a TNC.

E-Verify and the Federal Acquisition Regulation (FAR) E-Verify Clause

The Federal Acquisition Regulation (FAR) final rule requires that as of September 8, 2009, federal contractors with contracts containing the FAR E-Verify clause must use E-Verify as a condition of their contract. This affects prime contracts and subcontracts.

To determine whether a federal contract qualifies for the FAR E-Verify clause, the contract must meet the following criteria: (1) the contract was awarded on or after the E-Verify Federal Contractor Rule effective date of September 8, 2009 and includes the FAR E-Verify clause; (2) the contract has a period of performance of 120 days or more; (3) the contract's value is more than \$150,000; (4) at least some portion of the work under the contract is performed in the United States; and (5) the contract is not for commercially available off-the-shelf (COTS) items and related services.

If the prime contract contains the FAR E-Verify clause, the FAR E-Verify clause flows down to all tiers of subcontracts and the prime contractor is responsible for ensuring that the FAR E-Verify clause is included in

qualifying subcontracts. The federal prime contractors must require their subcontractors to use E-Verify when: (1) the prime contract includes the Federal Acquisition Regulation (FAR) E-Verify clause; (2) the subcontract is for commercial or noncommercial services or construction; (3) the subcontract has a value of more than \$3,000; (4) the subcontract includes work performed in the United States; and (5) the contract is not for commercially available off-the-shelf (COTS) items and related services.

A government contracting official can modify an existing indefinite delivery/indefinite quantity (IDIQ) contract on a bilateral basis to include the FAR E-Verify clause for future orders, when the remaining period of performance extends at least six months after September 8, 2009 and a substantial amount of work or number of orders are expected during the remaining performance period. If the FAR E-Verify clause is included in a modification of an IDIQ contract, the employer must participate in E-Verify within 30 calendar days of the modification date.

Updating/Enrolling Company Profile and Determining Who and When to Verify

Employers must enroll the company or update the company profile in E-Verify if they were awarded a new contract on or after September 8, 2009, that includes the FAR E-Verify clause. Employers can enroll at www.dhs.gov/E-Verify. If an employer already uses E-Verify and gets a contract with the FAR E-Verify clause, the employer must change the company's E-Verify profile to "Federal Contractor with FAR E-Verify Clause." Then the employer must choose which employees are going to be verified. Note that only users who choose "Federal Contractor with FAR E-Verify Clause" are permitted to verify existing employees hired before the employer registered for E-Verify for the relevant hiring site(s). Employers must enroll in E-Verify as a federal contractor with the FAR E-Verify clause within 30 calendar days of the award date of a contract that contains the clause.

When determining which employees to verify, most federal contractors with the FAR E-Verify clause will either verify all new hires and all existing employees assigned to a federal contract or verify the entire workforce (all new hires and all existing employees throughout the entire company). Employees hired on or before November 6, 1986, who are continuing in employment and employees already confirmed as Employment Authorized who are continuing in employment, are exempt from E-Verify. Employers may choose to not verify employees with an active confidential, secret, or top secret security clearance or HSPD-12 compliant credentials, or existing employees who perform support work (administrative, overhead or indirect work).

Certain special category employers have the option not to verify all new hires and may limit their cases to only those new and existing employees assigned to the federal contract which contains the FAR E-Verify clause. These special category employers include federal contractors that are institutions of higher learning, state or local governments, federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a federal agency under a performance bond.

For new hires, employers must begin entering Form I-9 information into E-Verify within 90 calendar days of enrolling or updating the company designation to "Federal Contractor with FAR E-Verify Clause." Once employers begin entering Form I-9 information for new hires into E-Verify, employers must enter Form I-9 information for all newly hired employees no later than the third business day after the employee's start date. If an employer already verifies new hires according to this rule, the employer should continue to do so and not change this practice just because the employer received a federal contract with the FAR E-Verify clause.

For verification of existing employees assigned to the qualifying contract, employers must enter Form I-9 information into E-Verify within 90 calendar days of designating the company as "Federal Contractor with FAR E-Verify Clause" or 30 calendar days of the employee's assignment to the contract, whichever date is later.

If the employer chooses to verify the entire workforce, the employer must enter Form I-9 information for all employees within 180 calendar days of enrolling in E-Verify or updating the company designation to "Federal Contractor with FAR E-Verify Clause" and electing to verify the entire workforce.

When verifying existing employees, employers may complete a new Form I-9 for all employees who will be run in E-Verify or complete a new Form I-9 when required and update an existing Form I-9 when allowed. Note that employers must retain any previously completed Form I-9s for employees. Once an employee has been verified, it is good practice to annotate the verification case number on Form I-9 or print the case details to file with Form I-9.

The USCIS offers E-Verify webinars [here](#), an E-Verify manual [here](#), and an E-Verify supplemental manual for federal contractors [here](#).