

## **THE FEDERAL GOVERNMENT POSTPONES IMPLEMENTATION OF E-VERIFY REQUIREMENT FOR CERTAIN FEDERAL CONTRACTORS;**

### **The Rule Will Now Be Applicable on February 20, 2009**

On Wednesday, January 14, 2009, the U.S. Department of Defense (DOD), General Services Administration (GSA), and the National Aeronautics & Space Administration (NASA) published in the Federal Register a Final Rule delaying the applicability date of the requirement that certain federal contractors use the E-Verify system to verify the employment eligibility of new hires and existing personnel working in fulfillment of a federal contract. The new applicability date is February 20, 2009.

#### **Applicability Date Postponed**

According to the Final Rule, federal contracting officers must include a clause requiring E-Verify participation in solicitations and contracts issued or entered into on or after February 20, 2009, unless the solicitations or contracts are exempt from the [general requirement](#).

Additionally, federal contracting officers are instructed to seek modification of existing contracts for indefinite-delivery/indefinite-quantity to include the E-Verify clause for future orders, if the remaining contract term extends beyond August 20, 2009, and the remaining work is substantial.

#### **E-Verify Memorandum of Understanding (MOU) for Federal Contractors Released**

The delay in implementation was welcome news to federal contractors, due in part to the delay in the Federal Government's release of a modified E-Verify Memorandum of Understanding (MOU), which must be entered into by federal contractors participating in E-Verify.

The standard MOU contained terms that did not comply with implementation of the new E-Verify requirement for federal contractors, and thus the Government recently issued a [revised standard MOU](#) for contractors. Before entering into any binding agreement, employers should consult with qualified legal counsel. If your company is presently a federal contractor or is seeking to bid on future federal contracts, consult your Foster Quan immigration attorney for

more information on the scope, application, and impact of the rules requiring federal contractors to participate in E-Verify. Our experienced attorneys specializing in Workforce Compliance are able to advise you on these and other issues impacting your company's compliance programs.

### **E-Verify Litigation**

On December 23, 2008, the Chamber of Commerce of the United States of America, the Society for Human Resource Management, and other organizations [filed suit](#) seeking an injunction that would forestall implementation of the DHS rule designating "E-Verify" as the system which must be used for electronic verification of employment eligibility. Plaintiffs have alleged that the DHS lacks the authority to require E-Verify participation, as Congress established E-Verify and other pilot programs as voluntary programs in which employers were, by statute, not compelled to participate. The lawsuit remains pending, and the Plaintiffs hope the delay in E-Verify implementation until February 20, 2009, will afford the new Administration under President-Elect Barack Obama the opportunity to reconsider implementation of costly regulatory requirements, particularly in the current economic environment.

As always, Foster Quan will continue to monitor legal developments which may impact on an employer's workforce compliance obligations and will make new information available in future Immigration Updates© and on our firm's website at [www.fosterquan.com](http://www.fosterquan.com).