
SESSIONS AMENDMENT ADDS E-VERIFY REQUIREMENT TO THE DHS APPROPRIATIONS ACT;

Grassley Amendment Would Take E-Verify a Step Further

Today the U.S. Senate adopted by voice vote an amendment to the Department of Homeland Security Appropriations Act (H.R. 2892), introduced by Senator Jeff Sessions (R—AL). Upon expected passage of the Appropriations Act, the Sessions Amendment would require Federal Government contractors and subcontractors to utilize the E-Verify program for the electronic verification of employment authorization for all new hires during the contract term and all existing employees working on federal contracts covered by the regulation.

The Sessions Amendment tracks the requirements of the Federal Appropriations Regulation (FAR) initially promulgated under the Bush Administration, and until recently postponed by the Obama Administration. By legislating the E-Verify requirement, the Senate effectively renders moot the allegations raised in recent litigation that the Executive Branch exceeded executive authority in mandating use of E-Verify, a program previously authorized by Congress only for voluntary participation by employers. With a legislative mandate, there is no room for continuing the challenge to the authority of the Executive Branch to implement the new FAR regulation. The regulation is set to go into effect for covered contracts entered into beginning September 8, 2009.

The Sessions Amendment also permanently reauthorizes the E-Verify Program, which was previously a pilot program known as Basic Pilot, and in recent years became the temporarily authorized program known as E-Verify.

In addition to the Sessions Amendment which has already passed by voice vote and is now part of the Appropriations Act, the Senate now must consider an additional amendment by Senator Charles Grassley (R—IA). The Grassley Amendment would permit any employer enrolled in E-Verify to use the system to electronically verify the employment authorization of all existing employees, regardless of date of hire. Under the current program, E-Verify enrollment specifically prohibits the use of E-Verify to check employment authorization for existing employees. Under the current program, only new hires after the date of an employer's enrollment may be verified through the electronic system.

Following recent acknowledgement by the Federal Government that enforcement agencies such as Immigration & Customs Enforcement (ICE) will have extensive access to "data-mined" information related to potential compliance failures, employers enrolled in E-Verify, or considering enrollment in E-Verify, are strongly encouraged to engage counsel for an

independent audit of Form I-9 Employment Eligibility Verification records and compliance policies in order to mitigate potential liability before it can be exposed in a government investigation. Proactive steps can reduce both civil and criminal liability and can help neutralize the adverse impact of exposure.

For more information on conducting an independent audit or mitigating potential liability, please contact your Foster Quan immigration attorney. As always, Foster Quan will continue to monitor breaking news in the area of worksite enforcement and will make new information available via future Immigration Updates®, Foster Quan's Twitter account, www.twitter.com/I9Solver, and on the [Foster Quan website](#).