U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) ANNOUNCES E-VERIFY COMPLIANCE DATA MINING PROGRAM

The U.S. Department of Homeland Security has announced plans to mine the E-Verify database for indicators of compliance failures and fraud. This announcement comes even as critics continue to point to flaws in the reliability of the E-Verify program for verifying employment eligibility, and the Obama Administration further delays implementation of an E-Verify requirement for federal contractors.

In a 22-page Privacy Impact Assessment for the new Compliance Tracking and Management System (CTMS), the DHS discloses that the E-Verify database will be data-mined, and describes how the system will be used to identify employers that misuse the system, fail to consistently utilize the system for verification of all new hires, or develop patterns of compliance failures.

Pursuant to a Memorandum of Agreement between U.S. Citizenship & Immigration Services (CIS) and U.S. Immigration & Customs Enforcement (ICE), evidence of compliance failures obtained through the new data-mining program are to be referred to ICE for purposes of initiating worksite enforcement investigations.

Specifically, government officials will be looking for evidence of the following types of discrepancies and compliance failures:

- Misuse, abuse, and/or fraudulent use of E-Verify occurring at critical infrastructure sites

- Violations regarding employment of unauthorized workers

- Criminal activity (harboring offenses)

- Failure to use E-Verify for all new hires

- Retaining employees after an E-Verify Final Non-confirmation

Upon notification of compliance failures, ICE is charged with initiating worksite investigations in appropriate cases. This means that a pattern of compliance failures, or the appearance of a pattern of compliance failures, could result in the opening of worksite enforcement investigations to enforce an employer's Form I-9 Employment Eligibility Verification obligations, as well as other immigration-related laws.

For the first time, with the announcement of the data-mining program, the government has published what constitutes an admission that participation in the federal government's voluntary E-Verify program will effectively render an employer more likely to be investigated.

Companies who participate in E-Verify should strongly consider the need for a proactive independent audit of Form I-9 and E-Verify compliance policies and records. Such an audit can assist employers that wish to remediate potential liability and proactively reduce exposure in advance of a government audit or worksite investigation.