

UPDATE

Spotlight Topic: Federal Acquisition Regulation Requires Federal Contractors to Use E-Verify

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On January 5, 2009, we posted an LMAC Spotlight Article about the requirement that as of January 15, 2009, federal contractors and subcontractors, as defined by the Federal Acquisition Regulation ("FAR"), will be required to begin using E-Verify to verify their employees' eligibility to legally work in the U.S. We have recently learned that the Federal government plans to publish a notice in the Federal Register some time next week postponing the implementation of this regulation and the E-Verify requirement for federal contractors and subcontractors.

Specifically, on December 23, 2008, the Chamber of Commerce of the United States of America and others filed a complaint with the U.S. District Court of Maryland, Southern District. The lawsuit challenges the Department of Homeland Security's rule requiring federal contractors to enroll in E-Verify. The Federal government has offered to hold off on implementing the regulation until February 20, 2009 in light of the lawsuit. Based on information we have received, the Federal government will not be including the E-Verify clause in any government contracts for the coming period.

There is a possibility that the implementation of E-Verify for federal contractors could be extended again given the current E-Verify extension deadline in March 2009 (E-Verify is only authorized and funded until March 2009), as well as through actions that may be taken by the new Administration.

On January 8, 2009, the Department of Homeland Security posted on its website a revised version of the E-Verify MOU for federal contractors. Although the document is dated 10/29/2008, it is a new version clarifying some issues raised by the E-Verify Committee of the American Immigration Lawyers Association. You may find this revised MOU located at <http://www.uscis.gov/files/nativedocuments/MOU.pdf>.