

Implementation of E-Verify Requirement for Federal Contractors Delayed

January 30, 2009

Implementation of the regulation that would require all federal contractors to participate in E-Verify has been further delayed – until May 21, 2009 – and it now appears uncertain whether the rule will ever take effect.

In our [January 15, 2009 Alert](#), we reported that implementation of the federal contractor E-Verify requirement had been delayed until February 20, 2009, owing to an agreement between the parties to an ongoing federal court lawsuit that has challenged the rule. The latest delay is the result of a supplementary agreement among the parties in *Chamber of Commerce of the United States of America v. Chertoff* to further extend the implementation date until May 21, 2009. The court announced a stay of the proceedings on January 28, 2009, to afford the Obama administration an opportunity to examine the rule.

On the day of President Obama's inauguration, January 20, 2009, the White House issued a memorandum to the heads of all executive departments and agencies instructing agency directors to "[c]onsider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect." The parties in the *Chamber of Commerce* lawsuit asked the Office of Management and Budget (OMB) to apply this directive to the federal contractor E-Verify regulation. The decision to extend implementation until May 21, 2009, will be published in the *Federal Register* in the coming days.

At present, federal contractors should be aware that they are obligated to comply with the E-Verify requirements only when they become parties to a federal contract that includes the E-Verify provision. This will not occur before May 21, 2009, and implementation of the final rule is now very much in question. It remains to be seen what legal and policy decisions the new administration will make, as such choices are likely to determine the ultimate fate of the regulation. **Until the final rule takes effect, no obligation exists to implement an E-Verify program.**

We will continue to follow developments in this area closely and will issue updated Alerts as events warrant.

For Further Information

If you have any questions about E-Verify, the federal contractor E-Verify requirement or the ongoing federal court litigation, please contact any of the [attorneys](#) in our [Employment & Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.