

FORD & HARRISON<sup>LLP</sup>  
THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



## Legal Alert: DHS Will Implement Federal Contractor E-Verify Requirements and Rescind Stalled No-Match Regulation

7/9/2009

On July 8, 2009, Department of Homeland Security (DHS) Secretary Janet Napolitano announced that the Department intends to implement a Bush-era rule mandating the use of E-Verify by federal contractors and subcontractors. Additionally, Secretary Napolitano announced that DHS is rescinding its controversial "No-Match" regulation.

### ***Implementation of E-Verify Requirements for Federal Contractors***

In June 2008, President Bush issued an Executive Order requiring federal government contractors use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of employees performing federal contract work. Former DHS Secretary Michael Chertoff designated the federal E-Verify program as the system to be used in accordance with the Executive Order. E-Verify is the federal government's web-based employment verification program that compares information from an individual's Form I-9 against federal government databases to verify workers' employment eligibility. For a discussion of the Executive Order, see our June 13, 2008, Legal Alert, available at <http://www.fordharrison.com/shownews.aspx?show=3953>.

Subsequently, the federal agencies charged with implementing the Executive Order issued a rule amending the Federal Acquisition Regulation (FAR) to require federal contractors and subcontractors use the E-Verify program and setting forth federal contractors' responsibilities under the Executive Order. For a more detailed discussion of this rule, see our November 14, 2008, Legal Alert, available at <http://www.fordharrison.com/shownews.aspx?show=4295>.

However, the federal contractor E-Verify rule has been subject to legal challenge in federal court by a coalition of business groups led by the U.S. Chamber of Commerce, who claim the Executive Order and rule violate the Illegal Immigration Reform and Immigrant Responsibility Act's express statutory prohibition against requiring participation in the E-Verify program. As a result of the lawsuit, implementation of the rule has been postponed four times since it was published. The most recent postponement pushed the effective date back to September 8, 2009. Although the lawsuit is still pending, DHS stated in a recent press release, "the Administration will push ahead with full implementation of the [federal contractor E-Verify] rule, which will apply to federal solicitations and contract awards Government-wide starting on September 8, 2009."

### ***No-Match Regulation to be Rescinded***

DHS also announced that it will rescind its controversial No-Match regulation, which set forth a "safe harbor" for employers who receive letters from the Social Security Administration stating that an employee's Social Security Number does not match the agency's records. The safe harbor required employers to take certain steps to resolve the discrepancy within a certain period of time or face liability. Shortly after being issued in 2007, the No-Match regulation was challenged in court, subject to an injunction and has never been implemented.

### ***Employers' Bottom Line:***

Although it is not clear how the lawsuit challenging the federal contractor E-Verify rule will ultimately affect its implementation, federal contractors and subcontractors covered by the rule should be prepared to comply with the E-Verify requirements for new federal contracts awarded after September 8, 2009. Ford & Harrison attorneys will be providing more detailed information regarding compliance with the rule. In the meantime, if you have questions regarding the E-Verify requirements or other business immigration issues, please contact Charles Roach, [croach@fordharrison.com](mailto:croach@fordharrison.com), 612-486-1631, or any member of Ford & Harrison's Business Immigration Practice Group.