E-Verify

Supplemental Guide

For Federal Contractors

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1.0 E-VERIFY FEDERAL CONTRACTOR RULE OVERVIEW

1.1 BACKGROUND

A presidential executive order and subsequent Federal Acquisition Regulation (FAR) rule require Federal contractors to use E-Verify to electronically verify the employment eligibility of employees working under Federal contracts. The order and rule reinforce Federal government policy that the Federal government does business only with organizations that have a legal workforce.

1.1.1 EXECUTIVE ORDER 12989

On June 11, 2008, President George W. Bush amended Executive Order 12989 to direct all Federal departments and agencies to require contractors to use an electronic employment eligibility verification system to verify the employment authorization of employees performing work under a Federal contract. The Department of Homeland Security (DHS) designated E-Verify as the electronic employment eligibility verification system that all Federal contractors must use as required by the amended Executive Order 12989.

1.1.2 THE E-VERIFY FEDERAL CONTRACTOR RULE

On November 14, 2008, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published a FAR final rule (FAR case 2007-013, Employment Eligibility Verification) that implements the amended Executive Order 12989. The FAR is a set of rules and regulations used to manage the way the Federal Government acquires supplies and services with appropriated funds.

The FAR final rule, known as the E-Verify Federal contractor rule, directs Federal agencies to require many Federal contractors to use E-Verify to electronically verify the employment eligibility of certain of their employees. It requires Federal contractors, through language inserted into their Federal contracts, to agree to use E-Verify to confirm the employment eligibility of all persons they hire during a contract term, as well as their current employees who perform work under a Federal contract within the United States. The rule's requirements to include language on E-Verify in Federal contracts took effect on September 8, 2009.

1.1.3 ABOUT E-VERIFY

E-Verify is a free, Internet-based system operated by DHS in partnership with the Social Security Administration (SSA). E-Verify allows participating employers to electronically verify their employees' employment authorization. Results are returned online within seconds.

E-Verify is the best method for employers to verify the employment authorization of their employees. E-Verify:

- Improves the accuracy of wage and tax reporting,
- Protects jobs for authorized workers, and
- Helps U.S. employers maintain a legal workforce.

More than 96 percent of E-Verify verification queries receive immediate employment authorization. Employees who do not receive instant authorization and choose to correct their government records to confirm their employment authorization must be allowed to continue to work during this process. In addition, a Federal contractor may not refuse to assign an employee to work on a Federal

contract, or remove an employee from working on a Federal contract, during the period when the employee is correcting his or her records. Additionally, a Federal contractor may not take any other adverse action related to a Tentative Nonconfirmation (TNC) while the employee corrects his or her records. A Federal contractor that does not allow an employee to continue to work while correcting his or her records may be found to violate the antidiscrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b.

1.2 HOW TO DETERMINE WHETHER YOU ARE AFFECTED BY THE RULE

The E-Verify Federal contractor rule will only affect Federal contractors who are awarded a new contract on or after the effective date of the rule, September 8, 2009, that includes the FAR E-Verify clause (73 FR 67704). Some existing Federal contracts may also be bilaterally modified to include the FAR E-Verify clause. See Section 5.3 of this guide for more information.

Your government contracting official, not the E-Verify program, determines whether your Federal contract will include the FAR E-Verify clause. You should review your contract for the FAR E-Verify clause and check with your government contracting official if you have questions.

1.3 THE FAR E-VERIFY CLAUSE IN A FEDERAL CONTRACT

Only Federal contracts awarded and solicitations issued after September 8, 2009 will include the FAR E-Verify clause that requires Federal contractors to use E-Verify. Your government contracting official will determine whether your contract qualifies for the FAR E-Verify clause, based on the criteria below. Subcontracts for more than $3,000 for most commercial or noncommercial services or construction also qualify for the FAR E-Verify clause.

For information on the FAR E-Verify clause, see Section 5 of this guide.

1.4 DESIGNATING YOUR ORGANIZATION AS A FEDERAL CONTRACTOR WITH THE FAR E-VERIFY CLAUSE

If you determine that you have a Federal contract that contains the FAR E-Verify clause, select **Federal contractor with the FAR E-Verify clause** when E-Verify asks you, **Which category best describes your clients organization?**, when you enroll or update your company profile using the **Maintain Company** page.

Only users who choose **Federal contractor with FAR E-Verify clause** are permitted to verify existing employees.

Federal contractors with the FAR E-Verify clause may also choose to verify their entire workforce, which includes all existing company employees regardless of whether they are assigned to a Federal contract. Unless those employees, however, are exempt from being run through E-Verify. See Section 3.3 of this guide for information on exempt employees.

Most Federal contractors with the FAR E-Verify clause will select from the following two options:

- **All new hires and all existing employees to a Federal contract**, or
- **Entire workforce**

Federal contractors that are institutions of higher learning, state and local governments, federally recognized Indian tribes or sureties performing under a

takeover agreement entered into with a Federal agency under a performance bond will select from the following two options:

- **Employees assigned to a covered Federal Contract only**
- **Employees assigned to a covered Federal Contract and new hires throughout the organization**

For information on enrolling in E-Verify or making this selection in E-Verify, see Sections 3.2, 4.0, 7 and 8 of this guide, as well as the *E-Verify User Manual for Federal Contractors* available at www.dhs.gov/e-verify.

1.5 HOW TO PROVIDE PROOF OF ENROLLMENT IN E-VERIFY

Federal contractors that are subject to the FAR E-Verify clause may be asked to provide proof of enrollment in E-Verify. To do so, go to your **Maintain Company** page in E-Verify and print the screen. This page contains proof of your enrollment in E-Verify.

2.0 INSTRUCTIONS FOR VERIFYING NEW AND EXISTING EMPLOYEES ON FORMS I-9

2.1 VERIFYING NEW EMPLOYEES USING FORM I-9

Newly hired employees must complete Form I-9. Employment Eligibility Verification (Form I-9), regardless of whether they are assigned to a Federal contract. Employers must comply with *Form I-9, Employment Eligibility Verification*, procedures found in the *Handbook for Employers: Instructions for Completing Form I-9 (Rev.07/31/09) (M-274)* found at www.uscis.gov. As an E-Verify employer, you also have additional employment verification requirements for Form I-9 that other employers do not have:

- If an employee chooses to present a List B document, you may only accept a List B document that contains a photo (if your employee cannot provide such a document because of religious objections, contact E-Verify Customer Support at 1-888-464-4218).
- You must photocopy any Employment Authorization Document (Form I-766) or Permanent Resident Card (Form I-551) if your employee chooses to present one of these documents and keep it with that employee's Form I-9.
- Your employees must write their Social Security number (SSN) on Section 1 of Form I-9. If an employee has applied for but has not yet received his or her SSN, note this on the employee's Form I-9 and run the employee's E-Verify query using the employee's SSN as soon as the SSN becomes available.

To initiate an E-Verify query, enter the information from the employee's completed Form I-9 into E-Verify. For detailed information and guidelines on using E-Verify, refer to the *Federal Contractor User Manual*.

2.2 VERIFYING EXISTING EMPLOYEES USING FORM I-9

To comply with the FAR rule, you must verify all new hires and existing employees assigned to the contract. However, you may choose to exceed the requirements of the rule and verify your entire workforce. Then, you must decide how to verify your employees. This process will require three steps:

Step 1: **Decide whether you want to verify**:

- Only those existing employees for whom you must initiate verification as explained in Sections 3, 4, 5, 7, and 8 of this guide, or
- Your entire existing workforce.

You must mark your selection in E-Verify when enrolling in the system for the first time or, if your company is already enrolled, by selecting the **Maintain Company** page in E-Verify to update your company's information. For more information on selecting which employees to verify in E-Verify, see Section 3.2 of this guide.

NOTE
If you choose **Entire Workforce** at the time of enrollment or when updating your **Maintain Company** page, you must verify all existing employees except those that are completely exempt from E-Verify as described in Section 3.3 of this guide. ***You are not permitted to change this decision at a later time***.

Step 2: Determine which existing employees are exempt from the Form I-9 process or have special requirements relating to the verification process

Verification of your employees requires that you complete or update Form I-9 as well as perform an E-Verify query. However, some employees are exempt from the employment verification process, including Form I-9, under the E-Verify Federal contractor rule.

Employees Completely Exempt from the Form I-9 Process

Employees who were hired on or before November 6, 1986 are exempt from completing Form I-9 and cannot be verified in E-Verify.

Employees with Special Requirements Relating to the Verification Process

Although you may not be required to verify certain employees in E-Verify, you must still comply with Form I-9 regulations. For more information on updating and reverification of Form I-9, consult the *Handbook for Employers: Instructions for Completing Form I-9 (M-274) (rev. 07/31/09)* found at www.uscis.gov.

Table 1: Employees with Exemptions or Special Requirements in the Verification Process

EMPLOYEE	FORM I-9	E-VERIFY
Employees previously verified in E-Verify	**There are no special Form I-9 requirements under the FAR rule for these employees.** You must reverify these employees as necessary under Form I-9 regulations.	These employees are completely exempt and may not be reverified in E-Verify. See also Section 3.3, Table 4.
Employees who have an active confidential, secret, or top secret security clearance in accordance with the National Industrial Security Program Operating Manual (NISPOM) or employees for whom background investigations have been completed and credentials issued under Homeland Security Presidential Directive-12 (HSPD-12)	**There are no special Form I-9 requirements under the FAR rule for these employees.** If these individuals are new employees, they must complete Form I-9. If the individuals are existing employees, you must reverify them as necessary under Form I-9 regulations.	If these employees meet the stated criteria, you are not required to verify them in E-Verify. You may still choose to verify these employees in E-Verify. See Section 3.3, Table 5, for additional information.

Step 3: Completing new Forms I-9 or Updating Existing Forms I-9

Decide how you will verify your existing employees' information on their Form I-9. You may either:

- Complete new Forms I-9 for your existing employees, or
- Update your employees' existing Forms I-9.

NOTE ON RETENTION OF FORMS I-9
Whichever option you choose, you must retain any previously completed Forms I-9 for that employee. You also must make the previous forms available for inspection if it is requested by an authorized official.

To assist you in making this decision, please review the chart below.

Table 2: Options for Updating Existing Employees on Form I-9

	VERIFICATION PROCESS	AVOIDING LIABILITY	HOW THIS DECISION
Option I: **Complete new Forms I-9 for all employees**	Complete new Forms I-9 for those existing nonexempt employees that need to be verified. The current rules for Form I-9 apply.	Verifying all nonexempt employees the same way helps avoid possible discrimination.	You may find this option easier because the process is the same as the process for newly hired employees.
Option II: **Complete new Forms I-9 when necessary and update existing Forms I-9 when allowable**	You and those employees who need to be verified must carefully examine and review their previously submitted Forms I-9 to determine: • Which employees must be verified on a new Form I-9; and • Which employees may be verified by updating their existing Form I-9	To avoid possible Form I-9 violations, you must carefully determine which cases require a new Form I-9 using the guidance in Section 2.2.1.	This option may suit your company's needs if you: • Have few employees and/or • Have sufficient resources to determine if your company needs to complete a new Form I-9 or update the existing one for each employee, using the guidance in Section 2.2.1.

Note: Under both Options I and II, you may not require the employee to present specific documents. For more information on this subject, consult the *Handbook for Employers: Instructions for Completing Form I-9 (M-274) (rev. 07/31/09)* found at www.uscis.gov.

2.2.1 INSTRUCTIONS FOR OPTION II: COMPLETE NEW FORM I-9 WHEN NECESSARY AND UPDATE EXISTING FORMS I-9 WHEN ALLOWABLE

Note: This section only applies to employers who have selected Option II

If you choose to review and verify the information on existing Forms I-9 with your existing employees, there will be instances where you must complete a new Form I-9. A new Form I-9 must be completed if your employee:

- Presented an ***expired*** document on a previous Form I-9 that allowed for such documents;

- Is an alien whose employment authorization as stated in Section 1 of Form I-9 has expired;
- Presented a List B document that did not have a photo when he or she completed the previous Form I-9;
- Presented a List B document on a previous Form I-9 and you are unable to determine if that document had a photo;
- Presented a document such as a Certificate of Naturalization or Form I-688 that was acceptable at the time of completion of the previous Form I-9, but is no longer acceptable on the latest Form I-9;
- Was at the time of attestation a Noncitizen National of the United States and was unable to attest to his or her correct status in Section 1 of Form I-9 with a revision date before 02/02/09;
- Had a change in his or her immigration status;
- Changed his or her name; or
- Completed his or her previous Form I-9 and it did not comply with Form I-9 requirements at the time of completion.

Instructions for updating a previously completed Form I-9:

- If your employee presented an unexpired Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) and it is still unexpired, photocopy the document and keep it with the employee's Form I-9.
- If your employee did not provide his or her Social Security number (SSN) when completing a previous Form I-9, or if the employee claims that the SSN has changed his or her number since then, the employee should update Section 1 of the previous Form I-9 with his or her current SSN.
- If your employee's Alien number has been changed by the DHS, the employee should update Section 1 of the previous Form I-9 with his or her current Alien number.
- If your employee presented an ***unexpired*** List B document on a previous Form I-9 and that document has since expired, you do not need to request a new version to update a previously completed Form I-9. Such List B documents include state-issued driver's licenses or military ID cards.
- If your employee presented an ***unexpired*** Form I-551 or U.S. Passport on a previous Form I-9 and that document has since expired, and his or her employment authorization is still current, you may not request that the employee present an unexpired version of either document. However, as is stated in Section 2.2.1, a new Form I-9 may be completed.
- Treat all employees consistently when updating a previously completed Form I-9. Requesting a specific document on the basis of someone's citizenship status or national origin may violate the antidiscrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b.

OPTION II: INSTRUCTIONS FOR ENTERING EXPIRED DOCUMENTS IN E-VERIFY

There may be circumstances in which Federal contractors subject to the FAR E-Verify clause who have chosen Option II will have to enter expired documents into E-Verify. Certain expired documents may cause some employees to get an unnecessary DHS Tentative Nonconfirmation (TNC). To avoid this situation, please follow the instructions below.

- **U.S. Passport:** If your employee previously presented a unexpired U.S. Passport on a previous Form I-9 that is now expired, enter the employee's information into E-Verify by selecting **Unexpired U.S. Passport or Passport Card** when E-Verify asks you what document(s) your employee presented on Form I-9. You must select **Unexpired U.S. Passport or Passport Card** when the document is expired in this instance. *Note: This action is not permissible under any other circumstance; this action will be monitored by the system.*

- **Permanent Resident Card (Form I-551):** In rare instances, if your employee previously presented an unexpired Form I-551 on a previous Form I-9 that is now expired, this will result in an unnecessary DHS TNC for a photo non-match. To learn how to prevent this situation, please call E-Verify Customer Support at 1-888-464-4218.

Note: Form I-766, Employment Authorization Document, is the only other document that activates E-Verify's Photo Tool. No other documents, unexpired or expired, trigger E-Verify's Photo Tool at this time.

3.0 E-VERIFY ENROLLMENT AND PARTICIPATION AS A FEDERAL CONTRACTOR WITH THE FAR E-VERIFY CLAUSE

Companies awarded a Federal contract that includes the FAR E-Verify clause must enroll in E-Verify. This section will assist you in when and how to enroll in and use E-Verify.

3.1 OVERVIEW OF E-VERIFY ENROLLMENT AND USE

Your deadlines for initiating verification for employees depends on whether you are newly participating in E-Verify or are already participating in the program.

3.2 DEADLINES FOR ENROLLMENT AND VERIFYING EMPLOYEES

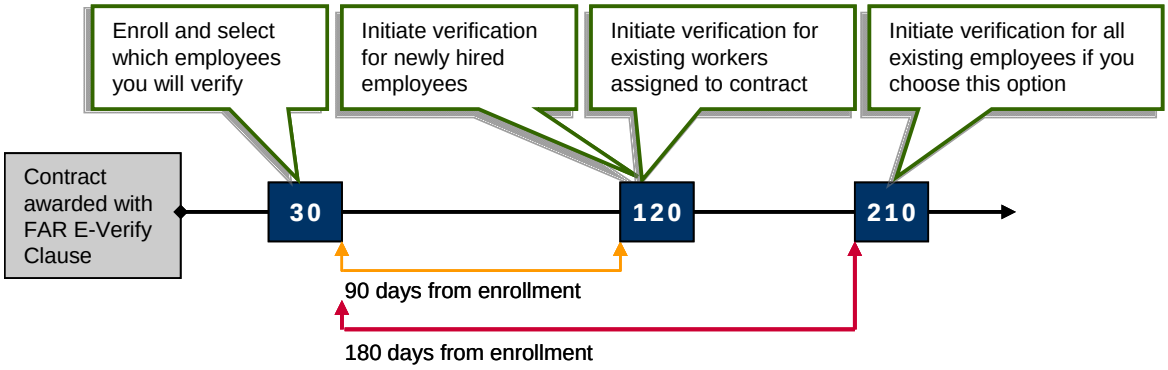
Companies New to E-Verify

If your company is not yet enrolled in E-Verify, you must:

- Enroll in E-Verify as a **Federal contractor with FAR E-Verify clause** within 30 calendar days of the award date of a contract that contains the FAR E-Verify clause. See Section 7 of this guide for help with enrollment for new companies enrolling in E-Verify.
- Initiate verification of all newly hired employees within 90 calendar days of your enrollment date unless you are an organization that qualifies for an exception as described in Section 4.0 of this guide.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of enrolling in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later.

When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period for verifying all existing employees. If you select Entire workforce, you must initiate verification of all existing employees within 180 calendar days. Once you select Entire workforce, you are not permitted to change that decision. See Section 7 for more information.

Figure 1: Deadlines for New Participants with the FAR E-Verify Clause



Companies Already Participating in E-Verify

If your company is already enrolled in E-Verify, but not designated as a **Federal contractor with FAR E-Verify clause** in E-Verify, you must do the following:

- Do not re-enroll in E-Verify. Update your **Maintain Company** page to **Federal Contractor with FAR E-Verify clause** within 30 calendar days of the award date of a new Federal contract that contains the FAR E-Verify clause. See Section 8 for more information.
- After updating your **Maintain Company** page, if your company has been selectively using E-Verify at only certain hiring sites, but not others, you must begin using E-Verify at all of your company's hiring sites and where you will be verifying any existing employees. See Section 8 for more information.
- As an existing user of E-Verify, you are required to verify new hires within 3 days of hire. If you are already verifying new hires under the Memorandum of Understanding (MOU), you must continue to do so.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of designating your company as a **Federal contractor with FAR E-Verify clause** in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later.
- When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period for verifying all existing employees. If you select **Entire workforce**, you must initiate verification of all existing employees within 180 calendar days. Once you select **Entire workforce,** you are not permitted to change that decision. See Section 8 for more information.

Figure 2: Deadlines for Existing E-Verify Participants

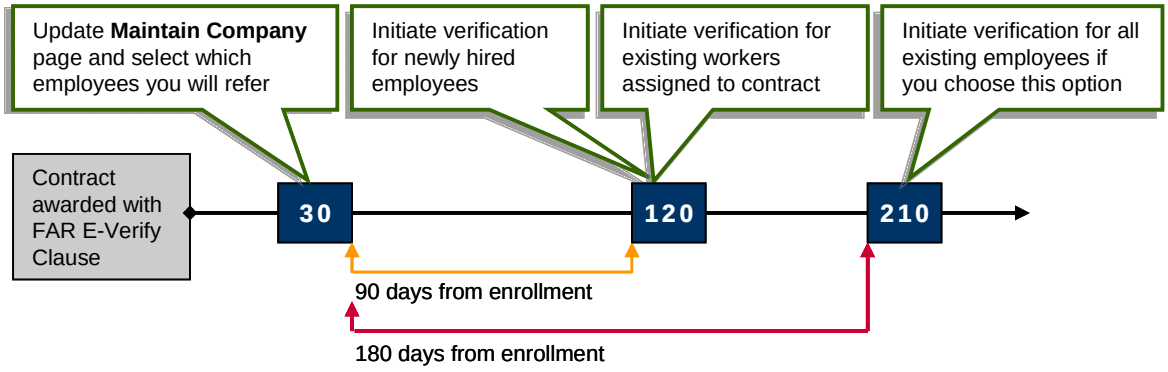


Table 3: Federal Contractor with FAR E-Verify Clause Enrollment and Verification Deadlines

Note: Some employees are completely exempt from the E-Verify requirement and some organizations are not required to verify all new hires. See Sections 3.3, 4 and 5 of this guide for more information.

	WHEN DO I ENROLL IN E-VERIFY?	**WHEN DO I VERIFY *NEW HIRES?***	**WHEN DO I VERIFY *EXISTING EMPLOYEES* ASSIGNED TO A CONTRACT?**	**WHEN DO I VERIFY *ALL EXISTING EMPLOYEES* IF I CHOOSE TO DO SO?**
New E-Verify Users	Within **30** calendar days of award or modification of a contract that contains the FAR E-Verify clause. When you enroll, select **Federal Contractor with FAR E-Verify clause** when prompted in E-Verify.	Initiate verification of all your new hires within **90** calendar days of enrolling in E-Verify and selecting which employees you will verify. ***** Note: Consider any employees you hire before you make this selection in E-Verify to be existing employees for purposes of E-Verify.	Initiate verification for all existing employees assigned to a contract within **90** calendar days of enrolling in E-Verify and selecting which employees you will verify. OR Within **30** calendar days of employee's assignment to a contract, whichever date is later.	Initiate verification Verify for all existing employees, regardless of whether they are assigned to a Federal contract, within **180** calendar days of enrolling in E-Verify if you have selected **Entire Workforce** when asked which employees you will verify.
Existing E-Verify Users	Do **NOT** re-enroll. Within **30** calendar days update your **Maintain Company** page in E-Verify to reflect **Federal Contractor with FAR E-Verify clause**.	Initiate verification for all your new hires within **90** calendar days of updating your **Maintain Company** page and selecting which employees you will verify.***** Note: Consider any employees you hire before you make this selection in E-Verify to be existing employees for purposes of E-Verify.	Initiate verification for all existing employees assigned to a contract within **90** calendar days of updating **Maintain Company** page and selecting which employees you will verify. OR Within **30** calendar days of employee's assignment to a contract, whichever date is later.	Initiate verification of all existing employees, regardless of whether they are assigned to a Federal contract, within **180** calendar days if you have selected **Entire Workforce** when asked which employees you will verify in your **Maintain Company** page.

*Once you begin verifying new hires, initiate a query no later than the 3rd business day after the employee's start date.

3.3 EMPLOYEES WHO ARE EXEMPT FROM E-VERIFY

The employees shown in Table 4 are exempt from the E-Verify requirement. You are not permitted to verify these employees in E-Verify. Other employees shown in Table 5 are not required to be verified in E-Verify, but you may choose to verify them. If you choose to verify the employees in Table 5, you should do so for all such employees to ensure that you are not engaging in discrimination in the verification process.

Table 4: Employees Completely Exempt from E-Verify

EMPLOYEE:	EXEMPT FROM E-VERIFY?	MAY I CHOOSE TO VERIFY THIS EMPLOYEE?
Hired on or before November 6, 1986 and continuing in employment with the same employer	Yes	No
Previously confirmed as authorized to work in E-Verify (but not exempt if a new hire)	Yes	No

Table 5: Employees You Are Not Required to E-Verify

EMPLOYEES WHO:	E-VERIFY REQUIRED?	MAY I CHOOSE TO VERIFY THIS EMPLOYEE?
Perform support work such as general company administration or indirect or overhead functions and do not perform any substantial duties applicable to the contract (but not exempt if a new hire or you choose to verify employment eligibility of all employees).	No	Yes
Have an active confidential, secret, or top secret security clearance in accordance with the National Industrial Security Program Operating Manual (NISPOM or Homeland Security Presidential Directive-12 (HSPD-12 credential; a background check alone is not enough to qualify for this exemption (also exempt if new hire). *Note: Transportation Worker Identification Credential (TWIC) cards do not qualify.*	No	Yes

For example: XYZ, Inc. hires Jane Doe, who has a top secret clearance, to work on a Federal contract. XYZ still must enroll in E-Verify and use E-Verify for its other employees, but is not required to use E-Verify for Jane. XYZ should note on Jane's Form I-9 that she was exempt from E-Verify because of her security clearance. Even if every employee at XYZ has a security clearance, XYZ still must enroll in E-Verify because the E-Verify Federal contractor rule contains no enrollment exception for companies whose employees all have security clearances.

4.0 CERTAIN ORGANIZATIONS THAT QUALIFY FOR EXCEPTIONS

The E-Verify Federal contractor rule generally requires use of E-Verify for all new employees, regardless of whether they are assigned to a Federal contract. However, the following organizations awarded a Federal contract that includes the FAR E-Verify clause are only required to use E-Verify for new hires and existing nonexempt employees who are working directly under a covered contract:

- State and local governments
- Institutions of higher education (as defined at 20 U.S.C. 1001(a))
- Governments of federally recognized Native American tribes
- Sureties performing under a takeover agreement entered into with a Federal agency under a performance bond

For example: A city government has a Federal contract that includes the FAR E-Verify clause. After the E-Verify Federal contractor rule implementation date, it hired Doris to work on a contract containing the FAR E-Verify clause and hired Frank to work on a project that is not part of a Federal contract. The city government need only verify new and existing employees assigned to a qualifying Federal contract. Therefore, the city government must use E-Verify to verify Doris, but is not required to verify Frank. The city is not required to verify anyone else on the staff not working on the Federal contract, but may choose to verify the entire staff (except for those employees who are exempt).

You must indicate that your organization qualifies for the exception when you enroll in E-Verify or, if your company is already enrolled, when you update your company profile.

Note: Your Form I-9 requirements are no different than the requirements for any other Federal contractor whose contract contains the FAR E-Verify clause. See Section 2 for more information.

4.1 YOUR OPTIONS

You may choose which new employees your organization will verify through E-Verify from the following two options:

- All new employees throughout your company, or
- Only those new employees working on a Federal contract that includes the FAR E-Verify clause.

You may also choose which existing employees you will verify in E-Verify from the following options:

- Only those existing employees working on a Federal contract that includes the FAR E-Verify clause, or
- All existing nonexempt employees throughout your company (your company's entire workforce).

NOTE: If you choose to verify your entire existing workforce in E-Verify, you must verify all of your existing employees except those who are completely exempt from E-Verify as discussed in Section 3.3. Once you decide either to verify the entire workforce or to verify only those employees assigned to a contract with the FAR E-Verify clause, you are not permitted to change that decision.

4.2 VERIFYING YOUR ENTIRE WORKFORCE

If you choose to verify your entire workforce (except for those employees who are completely exempt from E-Verify *as discussed in Section 3.3*) rather than just the employees assigned to a qualifying Federal contract, you must:

1. Notify us that you have chosen to verify your company's entire workforce (except for those employees who are exempt from E-Verify *as discussed in Section 3.3*) by:
    - Choosing the entire workforce option during the E-Verify initial enrollment process, or
    - Updating your company profile.
2. Initiate an E-Verify query for all existing nonexempt employees within 180 calendar days of notifying us that you have chosen to verify your entire workforce.

For instructions on enrollment, see Section 7.

5.0 QUALIFYING CONTRACTS

This section will assist you in determining whether your company has a qualifying Federal contract, which existing employees are exempt from verification in E-Verify and which companies are exempt from the E-Verify Federal contractor rule.

5.1 THE FAR E-VERIFY CLAUSE IN A FEDERAL CONTRACT

Only Federal contracts awarded and solicitations issued after September 8, 2009, will include the FAR E-Verify clause that requires Federal contractors to use E-Verify. Your government contracting official will determine whether your contract qualifies for the FAR E-Verify clause, based on the criteria below. Subcontracts for more than $3,000 for services or construction also qualify for the FAR E-Verify clause.

If your Federal contract contains the FAR E-Verify clause, subject to certain exceptions as described in the E-Verify Federal contractor rule and this Manual, you must use E-Verify to confirm the employment authorization of:

- All persons hired during a contract term, and
- Current employees who perform work under that Federal contract within the United States.

To verify these individuals, you must:

- Enroll in E-Verify within 30 days of the contract award date, and
- Use E-Verify to verify that all your new hires and existing employees working directly on Federal contracts are authorized to work in the United States.

If your Federal contract does not include the FAR E-Verify clause, you are **not** required to enroll in and use E-Verify as a Federal contractor, but may participate voluntarily. Only Federal contractors with the FAR E-Verify clause and covered subcontractors are permitted to run E-Verify queries for existing employees.

5.2 HOW TO DETERMINE WHETHER YOUR FEDERAL CONTRACT QUALIFIES

Your government contracting official, not the E-Verify program, will decide whether your Federal contract qualifies for the FAR E-Verify clause. To qualify, the contract must meet the following criteria:

- The contract was awarded on or after the E-Verify Federal contractor rule effective date of September 8, 2009 and includes the FAR E-Verify clause.
- The contract has a period of performance that is for 120 days or more.
- The contract's value exceeds the simplified acquisition threshold of $100,000.
- At least some portion of the work under the contract is performed in the United States.

If you have further questions about whether your Federal contract qualifies under the E-Verify Federal contractor rule:

- Check with your government contracting official and staff to clarify your obligations.
- Speak with your legal counsel if the government contracting official cannot assist you.

5.3 INDEFINITE-DELIVERY/INDEFINITE-QUANTITY (IDIQ) CONTRACTS

If you have an existing indefinite-delivery/indefinite-quantity (IDIQ) contract, your government contracting official may modify it on a bilateral basis to include the FAR E-Verify clause for future orders, in accordance with FAR 1.108(d)(3), when:

- The remaining period of performance extends at least six months after the effective date of the rule, and/or
- The amount of work or number of orders expected under the remaining period of performance is substantial.

If the FAR E-Verify clause is included in a modification of your IDIQ contract, you must participate in E-Verify within 30 days of the modification date.

5.4 CONTRACTS EXEMPT FROM THE FAR E-VERIFY FEDERAL CONTRACTOR RULE

Companies whose contracts are exempt from the E-Verify Federal contractor rule are not required to enroll in E-Verify. A contract is considered exempt if any one of the following apply:

- It is for fewer than 120 days.
- It is valued at less than $100,000, the simplified acquisition threshold.
- All work is performed outside the United States.
- It includes only commercially available off-the-shelf (COTS) items and related services.

Your company may voluntarily enroll in and use E-Verify at any time, but you may not run queries for existing employees unless you hold a Federal contract that includes the FAR E-Verify clause. If your company is awarded a Federal contract in the future that includes the FAR E-Verify clause, then you must enroll and/or use E-Verify at that time.

6.0 SUBCONTRACTORS, INDEPENDENT CONTRACTORS AND AFFILIATES

6.1 SUBCONTRACTORS

The E-Verify Federal contractor rule requires certain Federal prime contractors to require their subcontractors to use E-Verify when:

- The prime contract includes the FAR E-Verify clause;
- The subcontract is for commercial or noncommercial services or construction;
- The subcontract has a value of more than $3,000; and
- The subcontract includes work performed in the United States.

Subcontractors who are suppliers are not subject to the E-Verify Federal contractor rule.

6.2 PRIME CONTRACTOR AND SUBCONTRACTOR OBLIGATIONS

The prime contractor should provide general oversight to subcontractors to ensure that they meet the E-Verify requirement. The prime contractor may be subject to fines and penalties if it knowingly continues to work with a subcontractor who is in violation of the E-Verify requirement.

HOW SUBCONTRACTORS PROVIDE PROOF OF ENROLLMENT IN E-VERIFY
As proof of enrollment, the subcontractor should provide the prime contractor a copy of its **Maintain Company** page in E-Verify, which can be printed directly from E-Verify. This page contains proof of your enrollment in E-Verify.

Prime contractors are not responsible for verifying the subcontractors' individual employees. However, the prime contractor must, by whatever means the contractor considers appropriate, ensure that all covered subcontracts at every tier incorporate the FAR E-Verify clause at FAR 52.222-54, Employment Eligibility Verification, and that all subcontractors use the E-Verify system.

The subcontractor may designate the prime contractor as its agent for ensuring E-Verify compliance. The prime contractor must be enrolled in E-Verify as a designated agent to verify its subcontractors' employees.

6.3 INDEPENDENT CONTRACTORS AND SELF-EMPLOYED INDIVIDUALS

Form I-9 rules govern whether an individual is considered self-employed with respect to using E-Verify. Generally, self-employed individuals are not required to complete Forms I-9 on themselves, and therefore, are not required to use E-Verify. However, all employers, including sole proprietorships, must complete a Form I-9 for each employee they hire. Employers will need to confirm the employment authorization in E-Verify of each employee working under a Federal contract that includes the FAR E-Verify clause.

Employers are not required to complete Forms I-9 and use E-Verify for their independent contractors. The Form I-9 regulations use common-law understandings of employer-employee relationships to describe who is an independent contractor.

However, if the independent contractor is a subcontractor under a Federal contract covered by the FAR E-Verify clause, the E-Verify requirement will flow down to the independent contractor, who must use E-Verify to verify its own employees.

For example: Acme Corporation enters into a Federal contract that contains the FAR E-Verify clause to construct a Federal building and must verify its own employees in E-Verify. Acme subcontracts with Don Draftsman, a self-employed individual, to provide some technical drawings. Acme also subcontracts with Edwards Engineering to install some equipment. Both subcontracts are for more than $3,000 and are covered by the FAR E-Verify clause. Both companies carry on independent business, perform their work according to their own means and methods and are subject to Acme's control only as to results.

Acme does not use E-Verify to verify either Don Draftsman's employment authorization or the employment authorization of Edwards Engineering's employees. However, Acme is responsible under the E-Verify Federal contractor rule for ensuring that Edwards Engineering, as Acme's subcontractor on a covered Federal contract, enrolls in E-Verify and verifies its new hires and its existing employees assigned to the Federal subcontract.

While Acme is also responsible for ensuring Don Draftsman's compliance with the FAR E-Verify clause, as a self-employed individual, Don does not need to complete a Form I-9 on himself or enroll in E-Verify. Nor does ACME need to run Don through E-Verify. Under the employer sanction rules applicable to any employer, Acme cannot use an independent contractor if it knows that the independent contractor is an alien who is not authorized to work in the United States.

6.4 SUBSIDIARIES AND AFFILIATES

Only the legal entity (business) that signs the contract is considered the Federal contractor with the E-Verify clause and is bound by the E-Verify obligation.

Whether certain subsidiaries and affiliates are a part of the legal contracting entity depends on the specific factual context. Consult your legal counsel if you have additional questions about this topic.

Remember, the FAR does not extend to contracts under which all work is exclusively performed outside the United States. The U.S. territories of American Samoa and the Commonwealth of the Northern Mariana Islands are not considered part of the United States for purposes of the E-Verify Federal contractor rule.

7.0 ENROLLMENT INSTRUCTIONS FOR CONTRACTORS NOT YET ENROLLED IN E-VERIFY

If your company is awarded a Federal contract that includes the FAR E-Verify clause, you must enroll in E-Verify. This section will help you to enroll in E-Verify if you are a new E-Verify user that has never before enrolled.

7.1 OPTIONS FOR VERIFYING EXISTING EMPLOYEES

At a minimum, your company must verify existing nonexempt employees who work on a Federal contract that includes the FAR E-Verify clause. Before you enroll in E-Verify, decide whether you would like to verify:

- **Only those nonexempt employees working on the Federal contract with the FAR E-Verify clause**
    - With this option, you must track which employees are assigned to a Federal contract that includes the FAR E-Verify clause to ensure that you only verify those employees working on the qualifying contract. You must also track which employees have already been verified through E-Verify.
- **Your entire nonexempt workforce**
    - For some employers, choosing to verify your entire workforce (other than exempt employees) may simplify the E-Verify process.

7.2 FEDERAL CONTRACTOR ENROLLMENT STEPS

When you enroll your company, you will need to tell us some basic information about your company and agree to follow the rules of our program in the Memorandum of Understanding (MOU).

1. During enrollment, you will be asked, **Which category best describes your organization?**

- Federal contractor with FAR E-Verify clause
- Federal contractor without FAR E-Verify clause
- Federal Government
- State government
- Local government

If you choose **Federal contractor with FAR E-Verify clause**, you will be able to perform functions in E-Verify that are unavailable to other users, such as verifying existing employees. However, if you choose **Federal contractor without FAR E-Verify clause** or **Federal**, **State**, or **Local Government**, you must not verify existing employees. For more information on enrolling in E-Verify, please refer to the FAR User Manual for Federal Contractors available at www.dhs/gov/e-verify.

2. You will also be asked, **Which employees will your company verify?** You will then select from the following two options:

- **All new hires and all existing employees to a Federal contract**
- **Entire workforce (all new hires and all existing nonexempt employees throughout the entire company)**

NOTE ON MAKING THIS SELECTION

If you choose **Entire Workforce** at the time of enrollment or when initially updating your **Maintain Company** page**,** you are not permitted to change that decision at a later time.

If you choose **All new hires and all existing employees to a Federal contract** at the time of enrollment or when initially updating your **Maintain Company** page, and later you choose to verify your entire workforce, you may update your **Maintain Company** page to reflect this decision**.** Once you select **Entire Workforce**, you are not permitted to change your decision. See Section 3.2 of this guide.

8.0 INSTRUCTIONS FOR FEDERAL CONTRACTORS ALREADY ENROLLED IN E-VERIFY

If your company is awarded a Federal contract that includes the FAR E-Verify clause, you are required to use E-Verify. This section will help you to update your company profile and verification process in E-Verify if you are already enrolled.

8.1 UPDATING YOUR COMPANY PROFILE

Once your company is awarded a Federal contract that includes the FAR E-Verify clause, you must designate your company as a **Federal contractor with the E-Verify clause** in E-Verify. You should not do so until you officially receive a qualifying Federal contract.

If your organization is already enrolled in E-Verify, you must ensure that your company profile is updated in E-Verify. To do so:

1. Log in to E-Verify as a program administrator or ask your company's E-Verify program administrator to perform this function.
2. Once logged in, click **Maintain Company** on the left-hand side menu.
3. From the **Maintain Company** page, click the **View/Edit** button.
4. On the Organization Designation section, next to Employer Category, click **Edit**.
5. When asked, **Which category best describes your organization?** ensure that you have chosen **Federal Contractor with FAR E-Verify clause**, then click **Next**.
6. If your company qualifies for an organizational exception, you must select **None of these categories apply** even if your company also qualifies for Federal Contractor with FAR E-Verify clause.
7. When asked, **Which employees will your company verify?** choose the option that best fits your company's needs, then click **Next**.
8. Review your company information, and then click **Save & Continue**.

NOTE ON MAKING THIS SELECTION
If you choose **Entire Workforce** at the time of enrollment or when initially updating your **Maintain Company** page**,** you are not permitted to change that decision at a later time. If you choose **All new hires and all existing employees to a Federal contract** at the time of enrollment or when initially updating your **Maintain Company** page, and later you choose to verify your entire workforce, you may update your **Maintain Company** page to reflect this decision**.** Once you select **Entire Workforce**, you are not permitted to change your decision. The selection you make will affect the 180-day time period for verifying all existing employees described in Section 3.2.

8.2 FEDERAL CONTRACTOR TUTORIALS

Once you have changed your company designation to **Federal contractor with FAR E-Verify clause**, your E-Verify program administrators and general users must

successfully complete a Federal contractor-specific tutorial and pass a mastery test before they can use E-Verify again.

8.3 MEMORANDUM OF UNDERSTANDING

As a Federal contractor using E-Verify, your company must comply with the Federal contractor-specific terms of the E-Verify Memorandum of Understanding (MOU). The MOU can be found at www.dhs.gov/E-Verify.

- Depending on when your company enrolled in E-Verify, the MOU that your company signed may not contain the new Federal contractor-specific terms. It is not necessary for you to reenroll and sign a new MOU. Under the terms of your current MOU, E-Verify reserves the right to provide you with notice of any system changes including those relating to Federal Contractors with the FAR E-Verify clause. E-Verify also provides training materials that contain information for users about any changes to the system.
- All E-Verify-enrolled companies must comply with the terms of the current MOU irrespective of the date when they signed their own MOU or whether the MOU signed by that company differs in any way from the current MOU available.
- We strongly recommend that you review the current MOU to ensure your company complies with, and agrees to, any new terms.

8.4 UPDATING YOUR VERIFICATION PROCESS

The E-Verify Federal contractor rule adds some new requirements and removes some of the flexibility that your company traditionally had in deciding how it uses E-Verify. Depending on how your company has been using E-Verify, you may need to make some changes to how you use the system. For instance, if your company has been selectively using E-Verify at certain hiring sites, but not others, you must begin using E-Verify at all of your company's hiring sites.

For example: You only use E-Verify to verify employees at your Arizona locations. In your company profile, only your Arizona locations are listed. As a Federal contractor, you must include all of your company's hiring sites in your company profile. Also, because you must verify all of your newly hired employees with certain exceptions, you will no longer be able to use E-Verify on a location-by-location basis.

You do not need to wait to expand your use of E-Verify to all of your company's hiring sites until you are awarded a Federal contract that includes the FAR E-Verify clause. If you expand your E-Verify use now, your company will be ready if it is awarded a Federal contract that includes the FAR E-Verify clause.

Note: You may not verify your existing employees until you are awarded a Federal contract that includes the FAR E-Verify clause.

9.0 INFORMATION FOR DESIGNATED AGENTS

E-Verify service providers, also known as designated agents, use E-Verify to verify the employment authorization of their clients' employees. This section will assist designated agents and their clients in preparing for the effects of the E-Verify Federal contractor rule.

9.1 RECOMMENDED ACTIONS FOR DESIGNATED AGENTS

1. **Update E-Verify profiles**

   - **For your Federal contractor clients**
     Update each of your Federal contractor client company profiles separately to designate it as a **Federal contractor with FAR E-Verify clause**.
   - **For your own company**
     Only update your designated agent profile to designate yourself as a Federal contractor if you are a **Federal contractor with FAR E-Verify clause** that was awarded a contract that contains the FAR E-Verify clause.

2. **Ensure that you meet the tutorial requirement**

   Before updating a company profile to designate **Federal contractor with FAR E-Verify clause**, inform the program administrators and general users of that profile that they must complete a Federal contractor-specific tutorial and pass a mastery test before accessing E-Verify again.

3. **Review the latest E-Verify Memorandum of Understanding (MOU)**

   All E-Verify-enrolled companies must comply with the terms of the current E-Verify MOU, which contains Federal contractor-specific terms with which both Federal contractor client companies and their designated agents must comply. Depending on when you enrolled in E-Verify, your original MOU may not contain these terms. Therefore, you should review the current MOU to ensure your company complies with the Federal contractor-specific terms of the current E-Verify MOU.

9.2 USING WEB SERVICES

We are now able to support FAR access via Web Services on Interface Control Document (ICD) versions 14 and higher. All versions of Web Services currently in use support the FAR.

The Web Services Access Method requires a company to develop software that interfaces with U.S. Citizenship and Immigration Services (USCIS) to perform employment eligibility verifications of newly hired employees. Your company's software will extract data from your existing system or an electronic Form I-9 and transmit the information to government databases. If you choose this option, you will be sent the Employer Web Services ICD. The ICD contains the information you need to develop and test your software interface.