

22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the *United States* and to employ in the *United States* only individuals who are eligible to work in the *United States*. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the *United States*, but is not a substitute for any other employment eligibility verification requirements.

(b) *Contracting officers shall* include in *solicitations* and contracts, as prescribed at [22.1803](#), requirements that Federal contractors *must*-

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the *United States*, except that the contractor *may* choose to verify only new hires assigned to the contract if the contractor is-

(i) An institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A *surety* performing under a takeover agreement entered into with a *Federal agency* pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at [52.222-54](#), in *subcontracts* for-

(i) Services, except for *commercial services* that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) *Construction*.

(c) Contractors *may* elect to verify employment eligibility of all existing employees working in the *United States* who were hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands) instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of-

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12.

(d) In exceptional cases, the *head of the contracting activity may* waive the E-Verify requirement for a contract or *subcontract* or a class of contracts or *subcontracts*, either temporarily or for the period of performance. This waiver authority *may* not be delegated.

(e) DHS and the Social Security Administration (SSA) *may* terminate a contractor's memorandum of understanding (MOU) and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency *must* refer the contractor to a *suspending and debarring official* for possible *suspension* or *debarment* action.

During the period between termination of the MOU and a decision by the *suspending and debarring official* whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at [52.222-54](#). If the contractor is suspended, debarred, or subject to a voluntary exclusion as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its *suspension, debarment*, or voluntary exclusion. If the contractor is not suspended, debarred, or subject to a voluntary exclusion, then the contractor *must* re-enroll in E-Verify.

Parent topic: [Subpart 22.18 - Employment Eligibility Verification](#)