



## **President's FY 2018 Budget Plan Requests \$15 Million to Support Future Implementation of Mandatory Nationwide Use of E-Verify**

Insights

3.24.17

On March 17, 2017, the Office of Management and Budget (OMB) published the first installment of the Trump Administration's FY 2018 Budget plan: "America First: A Budget Blueprint to Make America Great Again." The Budget provides details on discretionary funding proposals, with the complete Budget request being released later this year to include specific mandatory and tax proposals. The government's 2018 fiscal year commences on October 1, 2017.

The President's budget plan allocates \$44.1 billion to the Department of Homeland Security (DHS). Much of the budget funds are targeted for enhancement of border security and strengthening of interior immigration enforcement. Included is a specific \$15 million allocation to "begin implementation of mandatory nationwide use of the E-Verify Program." The requested funds appear to be earmarked for DHS to make the necessary internal improvements to the E-Verify system to support a future rollout of a nationwide E-Verify mandate.

As background, E-Verify is a government web-based system that compares information from the Employment Eligibility Verification Form (Form I-9) to data from U.S. government databases to confirm the eligibility to work in the United States. According to the United States Citizenship and Immigration Services (USCIS), E-Verify is used by more than 700,000 employers. Participation in the E-Verify program is voluntary unless required by federal or state/local law. It is required for most federal contractors and for all employers in Arizona, Georgia, Louisiana and Utah, as well as for public employers in Florida and Texas. 28 states have no E-Verify requirement.

President Trump will need an act of Congress to mandate the nationwide use of E-Verify. Sen. Charles Grassley, a Republican senator from Iowa, recently reintroduced legislation that would do just that: it would permanently authorize and require all employers to use the E-Verify program. Any bill to make E-Verify mandatory will face opposition but has its best chance for passage in years with Republican majorities in both houses of Congress.

How the E-Verify mandate is implemented raises essential questions for employers. E-Verify may be required on a "go forward" basis effective as of the date listed in the legislation. In that case, E-Verify would be used to verify the work authorization of future new employees during the onboarding process. E-Verify would not be required of the employer's existing workforce.

The bigger concern to employers is a legislative mandate requiring E-Verify of all existing and future employees. The Grassley bill, for example, would make E-Verify mandatory for all employers within one year of enactment. It requires employers to check the status of all employees not previously verified through E-Verify within three years of enactment and requires employers to terminate employees found to be unauthorized to work due to a check through E-Verify. With an estimated undocumented immigrant population of approximately 11 million people and just over 151 million workers, employers in industries that primarily utilize low-skilled labor may find a large percentage of their workforce impacted if E-Verify is required for all existing employees.

Although budget requests do not carry any legal consequences, they are strong indicators of an administration's legislative priorities. Employers not enrolled in E-Verify may now want to consider how it will impact their business as it appears that mandatory E-Verify is a top priority for the Trump administration.

Fisher Phillips has knowledgeable attorneys with extensive experience implementing E-Verify and other immigration compliance programs in a variety of industries. Please contact your Fisher Phillips legal representative should you have any questions regarding your obligations as an employer.