



OFCCP Issues New Form I-9 Inspection Procedures

Insights

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The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issued a directive on October 2, 2008, effective immediately, regarding inspection procedures for an OFCCP compliance officer (CO) when reviewing Forms I-9 during an on-site compliance review.

The impetus for the new directive is the U.S. Citizenship and Immigration Services' revision last year of Form I-9, and President Bush's recent Executive Order requiring federal contractors to use an electronic verification system to confirm the employment eligibility of new hires and current employees working on the new federal contract. E-Verify, a web-based system currently operated jointly by the Department of Homeland Security Citizenship and Immigration Services (CIS) and the Social Security Administration (SSA), has been designated as the authorized electronic verification system until March 6, 2009.

The new OFCCP inspection procedures include these requirements: 1) federal contractors must use the new Form I-9 (Rev. 06/05/07) for all employees hired, rehired, or re-verified after November 7, 2007; 2) the CO must ensure that any electronically reproduced or retrieved Form I-9 is legible and that there is no evidence of inserts or changes to the name, content, or sequence of the data elements; 3) the CO may request that the federal contractor retrieve and reproduce electronically stored Form I-9 and supporting documentation and associated audit trails showing who had access to the electronic system and activity within the system during a given period of time; 4) the CO may request that the federal contractor provide hardware and software, personnel and documentation necessary to retrieve, read and reproduce electronically stored I-9 forms and any supporting documents, associated audit trails, reports, and other data used to maintain authenticity, integrity and reliability of the records; and 5) federal contractors must provide, if asked, reasonably available electronic summary files (e.g., spreadsheets) containing all information electronically stored and the CO may use that summary to select certain Form I-9 for inspection.

The DHS has not yet issued regulations for the new Executive Order, but is authorized to do so. The OFCCP may revise its Form I-9 inspection procedures once the DHS issues implementing regulations. The Federal Acquisition Regulation Counsel (FARC) has not yet issued a final rule to implement the Executive Order, but comments to FARC's proposed rule closed on August 11, 2008.