

December 16, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

We write today to request that the Government Accountability Office (GAO) examine the compliance of Federal contractors and subcontractors with the Federal Acquisition Regulation (FAR) E-Verify rule. To date, no public-facing report has assessed the impact of this regulation on Federal contracting and grantmaking practices. Pursuant to our Committees' jurisdictions over Federal contracting and the E-Verify program, we ask that you examine the compliance of Federal contractors, subcontractors, grant recipients, and subgrantees with the FAR E-Verify rule and the consistency with which Federal procurement officials have applied this rule and affiliated policies and guidance to award contracts and grants that include the E-Verify clause.¹

In response to rising levels of illegal immigration, Congress passed the Immigration Reform and Control Act of 1986, which required all employers to verify the identity and work authorization of their employees through a form-based process, now known as Form I-9. After rising waves of illegal immigration in the early 1990s, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 to institute a number of border security measures, including three electronic employment verification pilots. E-Verify, then-known as the Basic Pilot Program, is the only remaining employment verification program created by IIRIRA. In 2008 and 2009, a series of executive actions from the Bush and Obama Administrations required certain Federal contractors to use E-Verify. Current guidance issued by U.S. Citizenship and Immigration Services (USCIS) gives discretion to Federal contracting officials to determine whether or not a contractor should enroll in E-Verify.

Today, E-Verify remains a mostly voluntary program; however, the FAR E-Verify rule does create certain mandatory requirements for E-Verify participation. Specifically, this rule applies E-Verify requirements to certain Federal contractors whose contracts: (1) were awarded on or after the E-Verify Federal contractor rule effective date of September 8, 2009 and contain the E-Verify clause; (2) has a period of performance for 120 days or more; (3) whose value exceeds the simplified acquisition threshold; (4) and have at least some portion for the work under the contract performed in the United States.² The E-Verify rule also requires certain subcontractors to use E-Verify if: (1) the prime contract includes the E-Verify clause; (2) the contract is for commercial or non-commercial services or construction; (3) the subcontract has a value of more than \$3,500; (4) and the subcontract includes work performed in the United States. Additionally the E-Verify regulation allows for contracting officials to modify an Indefinite-Delivery/Indefinite-Quantity (IDIQ) contract on a bilateral basis to include the E-Verify clause.³

¹ FAR case 2007-013, Employment Eligibility Verification.

² 48 C.F.R., Subpart 22.18

³ FAR 1.108(d)(3).

To date, no public-facing report has examined the compliance of Federal contractors and subcontractors with the FAR E-Verify rule, the number of entities who are covered by the rule, or the consistency with which Federal contracting officials have applied the FAR E-Verify rule. Accordingly, we ask that you examine the following questions:

1. How do Federal agencies ensure that the E-verify clause is included, as appropriate, in applicable contract actions?
 - a. How do Federal agencies ensure that covered contractors and subcontractors use E-Verify consistent with contract requirements?
 - b. What challenges or barriers, if any, do Federal agencies face in monitoring contractors' or subcontractors' use of and compliance with E-Verify?
2. To what extent do Federal agencies require grant recipients or subgrantees to use E-Verify as part of a grant agreement?
 - a. In instances in which E-Verify is required, how do Federal agencies ensure that grant recipients and subgrantees are using and maintaining compliance with E-Verify?
 - b. What challenges or barriers, if any, do Federal agencies face in monitoring grant recipients' and subgrantee' use of and compliance with E-Verify?
3. How does USCIS work with covered Federal contractors, subcontractors, grantees, and subgrantees to enroll in and use E-Verify?
 - a. How does USCIS ensure that these entities' use of E-Verify is consistent with program policies and requirements?
 - b. What challenges or barriers, if any, prevent or hinder USCIS's oversight of these entities' use of and compliance with E-Verify?
4. To what extent, if any, have Federal agencies taken action against covered Federal contractors, subcontractors, grant recipients, and subgrantees should they fail to comply with E-Verify requirements, including suspension, debarment, or other penalties?

Thank you for your attention to this matter.

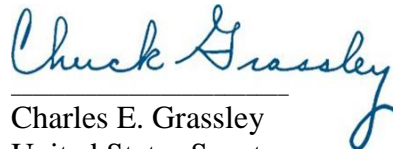
Sincerely,



James Lankford
United States Senator



Rob Portman
United States Senator



Charles E. Grassley
United States Senator