

# President Issues Executive Order Mandating That Federal Contractors Use Controversial and Error-Prone Basic Pilot/E-Verify

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Last month, President George W. Bush amended Executive Order 12989 in order to mandate that certain public and private federal contractors use the severely flawed and inaccurate Basic Pilot/E-Verify program to verify the employment eligibility of all newly hired employees and also to reverify the eligibility of existing employees working under the contractor's contract with the federal government. This action is a significant change in policy and law that drastically alters the current requirements of Basic Pilot/E-Verify and represents the administration's unlawful, unrealistic, and wrong-headed approach to solving our nation's immigration problems. This latest example continues the trend of disregarding workers' constitutional and due process rights as the administration pursues its own brand of enforcement-only strategies.

Congress created Basic Pilot/E-Verify as a *voluntary* program that employers could use to verify the employment eligibility of newly-hired employees. Congress never intended the program to be mandatory. In the past several months, numerous government-commissioned reports, expert witnesses testifying at congressional hearings, and other independent evaluations have laid out in great detail the program's shortcomings and why it isn't "ready for prime time."

Yet in spite of continuing evidence that the databases on which Basic Pilot/E-Verify relies are plagued by inaccuracies and that a substantial percentage of the employers using the program abuse it, the president has opted to mandate that it be used by at least 200,000 federal contractors that employ approximately 4 million workers in the United States. Moreover, the president's order directly contradicts existing laws that do not allow use of Basic Pilot/E-Verify to reverify the employment eligibility of existing employees, as well as congressional intent that the program be voluntary. It also circumvents the existing legal process. It constitutes a back-door approach to instituting a full-blown, mandatory Basic Pilot/E-Verify system.

Furthermore, this executive order is more far-reaching than any previous Bush administration policy regarding E-Verify. This change applies to private and *public* contractors. In addition to affecting private businesses that contract with the federal government, the order potentially affects every state, county, and other local government that has a federal contract covered under the order or that hopes to enter into a federal contract. The order mandates on a large scale a system substantially abused by employers without fixing the problems that lead to the abuse. As a result, employers affected by the order may well engage in prohibited behavior such as using the program for purposes other than verifying employment eligibility or to prescreen employment candidates, resulting in discrimination against workers.

In the past six months, the administration has proposed regulations that affect several federal programs and that pressure employers to use Basic Pilot/E-Verify by making benefits employers derive from the programs contingent on enrollment in Basic Pilot/E-Verify. Changes proposed for the H-2A and H-2B visa category requirements, the Optional Practical Training guidelines,



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and now the federal contractor program all effectively mandate the use of Basic Pilot/E-Verify. As the administration steadily expands mandatory use of Basic Pilot/E-Verify, it has failed to realistically acknowledge the damage such changes will have on immigrant and U.S. citizen workers and our economy.

Imposing any mandatory electronic employment eligibility verification system, even if only on certain federal contractors, without providing a path to legal status for the 7 million unauthorized workers in our economy will lead to severe economic consequences for many industries, force unauthorized workers further into the shadows, and divert billions of dollars into the underground economy. At a time when many workers and businesses are struggling because of the poor economy, the president has chosen to ignore these realities and forge ahead with his own misguided agenda. Bullying employers into using Basic Pilot/E-Verify is simply one more “mission accomplished” approach to a complex problem that cries out for and deserves real solutions.

*After the president issued amended Executive Order 12989, proposed regulations for implementing it were published in the Federal Register on June 12, 2008.<sup>1</sup> **Comments by the public are encouraged and may be submitted until August 11, 2008.** More detailed information on the program,<sup>2</sup> talking points,<sup>3</sup> and model comments to the proposed rule are available on NILC’s website.<sup>4</sup>*

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<sup>1</sup> 73 FR 33374–81 (June 12, 2008), available at [www.nilc.org/immsemplymnt/ircaempverif/e-verify-73FR33374-2008-6-12.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-73FR33374-2008-6-12.pdf).

<sup>2</sup> For more detailed information, see E-VERIFY WILL SOON BE REQUIRED FOR FEDERAL CONTRACTORS (Greenberg Traurig, LLP, Immigration Alert, June 2008), available at [www.nilc.org/immsemplymnt/ircaempverif/GTAlert\\_E-Verify.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/GTAlert_E-Verify.pdf).

<sup>3</sup> For talking points, see [www.nilc.org/immsemplymnt/ircaempverif/e-verify-exec-order-TPs-2008-07-15.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-exec-order-TPs-2008-07-15.pdf).

<sup>4</sup> Model comments are available at [www.nilc.org/immsemplymnt/ircaempverif/index.htm#model](http://www.nilc.org/immsemplymnt/ircaempverif/index.htm#model).