



October 2023

FEDERAL CONTRACTING

Agencies Can Better Monitor E-Verify Compliance

GAO Highlights

Highlights of [GAO-24-106219](#), a report to congressional requesters

Why GAO Did This Study

Since 2009, a clause in certain federal contracts requires contractors to use the E-Verify program to confirm their workers' employment eligibility. As of 2023, about 95,000 federal contractors were enrolled in E-Verify. Agencies have obligated hundreds of billions of dollars on contracts that appeared subject to the requirement.

GAO was asked to assess federal agencies' use of the E-Verify clause for federal contractors. This report focuses on the extent to which DOD, DHS, and HHS included the clause in selected contracts and monitored contractor compliance with the clause. It also addresses whether USCIS has taken action when contractors did not follow E-Verify program requirements.

GAO selected the three agencies because they accounted for nearly two-thirds of fiscal year 2021 contract awards that appeared subject to the E-Verify clause, the most recent data available at the time of GAO's review. GAO reviewed fiscal years 2019–2021 contract data, assessed a nongeneralizable sample of 24 contracts, and analyzed data on contractor E-Verify enrollment.

What GAO Recommends

GAO is making eight recommendations, including that OMB clarify agency responsibilities for monitoring contractor compliance with the E-Verify clause, and that DHS implement a process to refer contractors with terminated accounts to appropriate agency officials. DOD, DHS, HHS, and OMB concurred with the recommendations.

View [GAO-24-106219](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov, or Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov.

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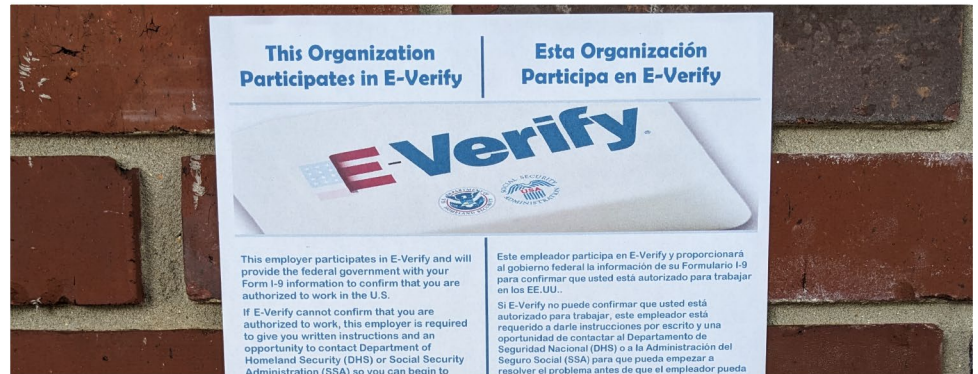
Agencies Can Better Monitor E-Verify Compliance

What GAO Found

The E-Verify program allows employers to electronically confirm that their employees are eligible to work in the U.S. The Federal Acquisition Regulation (FAR) requires agencies to include, with certain exceptions, a contract clause directing contractors to enroll in and use the program. The Departments of Defense (DOD), Homeland Security (DHS), and Health and Human Services (HHS) included the clause in 22 of the 24 contracts that GAO reviewed.

However, the three selected agencies' efforts to monitor contractor compliance with the E-Verify clause were inconsistent. Some officials thought they were not responsible for monitoring contractor compliance. The Office of Management and Budget (OMB) office that directs federal procurement policy told GAO that it expects agencies to monitor contractor E-Verify compliance. However, OMB has not clearly communicated this expectation to agencies.

E-Verify Participation Poster



Source: GAO (photo). | GAO-24-106219

U.S. Citizenship and Immigration Services (USCIS)—a component of DHS—administers E-Verify. USCIS may terminate E-Verify accounts, including those of federal contractors, for misuse and non-use. Misuse includes unresolved discrepancies that prevent confirmation of an employee's eligibility. Non-use includes not verifying any employees in a specified time frame. From 2020 to March 2023, USCIS terminated almost 300 contractor accounts for misuse and more than 5,000 such accounts for non-use. USCIS no longer terminates contractor accounts for non-use.

However, USCIS lacks a process to refer these contractors for further review, as required. The FAR states that DHS must refer contractors whose E-Verify accounts it terminates to suspension and debarment officials who determine whether contractors should be temporarily disqualified or excluded from government contracting. DHS officials acknowledged USCIS—the component responsible for these referrals—is not meeting this requirement. Agencies' suspension and debarment officials, therefore, are not able to determine whether these federal contractors' misuse of E-Verify merits further action. DHS officials said they plan to address this, but these plans are in the early stages.

Contents

Letter		1
	Background	4
	Agencies Included the E-Verify Clause in Most Selected Contracts, but Did Not Accurately Report It in FPDS	11
	Selected Agencies Varied in Monitoring Contractor E-Verify Compliance and Lack Data from USCIS for This Duty	18
	USCIS Terminated Federal Contractor Accounts without a Process to Refer Them to Suspension and Debarment Officials	26
	Conclusions	32
	Recommendations for Executive Action	33
	Agency Comments and Our Evaluation	34
Appendix I	Objectives, Scope, and Methodology	36
Appendix II	Comments from the Department of Defense	43
Appendix III	Comments from the Department of Homeland Security	45
Appendix IV	Comments from the Department of Health and Human Services	50
Appendix V	GAO Contacts and Staff Acknowledgments	52
Table		
	Table 1: Number of Selected Contracts Containing the E-Verify Clause	11
Figures		
	Figure 1: Roles and Responsibilities Related to Federal Contractor Use of E-Verify	10
	Figure 2: Evolution of E-Verify Dollar and Simplified Acquisition Thresholds	13

Figure 3: Contracting Officials' Reported Monitoring of Contractor Compliance with the E-Verify Clause for 24 Contracts GAO Reviewed	19
Figure 4: Federal Contractor E-Verify Accounts Terminated for Misuse and Non-use as of March 31, 2023	28
Figure 5: USCIS E-Verify Website Screenshot of How to Find Participating Employers, Taken May 25, 2023	30

Abbreviations

COTS	commercially available off-the-shelf
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
HHS	Department of Health and Human Services
MOU	memorandum of understanding
OMB	Office of Management and Budget
USCIS	U.S. Citizenship and Immigration Services

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October 3, 2023

The Honorable Chuck Grassley
Ranking Member
Committee on the Budget
United States Senate

The Honorable James Lankford
Ranking Member
Subcommittee on Government Operations and Border Management
Committee on Homeland Security and Governmental Affairs
United States Senate

Each year, federal agencies obligate hundreds of billions of dollars on federal contracts. Federal law generally prohibits employment of noncitizens who are not authorized to work in the U.S., and requires employers, including federal contractors, to take certain steps to verify that employees are not unauthorized workers.¹ U.S. Citizenship and Immigration Services' (USCIS) E-Verify program allows employers to electronically confirm the employment eligibility of their employees. According to USCIS, more than 1 million employers had enrolled in E-Verify as of May 2023, including about 95,000 federal contractors. The Federal Acquisition Regulation (FAR) requires federal agencies to include a clause directing federal contractors to use E-Verify in all contracts that exceed \$150,000, unless certain exceptions apply. In fiscal year 2021, agencies awarded approximately 74,000 contracts and orders with obligations totaling approximately \$185 billion that appeared to meet the FAR's requirement for inclusion of the E-Verify clause based on federal

¹The statute uses the term "unauthorized alien" to refer to an individual of non-U.S. nationality (i.e., foreign national or noncitizen) who is not work authorized through lawful permanent resident status, or otherwise by statute or by the Secretary of Homeland Security. 8 U.S.C. § 1324a(h)(3). The Immigration Reform and Control Act of 1986, among other things, made it unlawful for U.S. entities to knowingly hire, recruit or refer for a fee, or continue to employ noncitizens who are not authorized to work in the U.S. Additionally, employers are to comply with the employment verification system requirements in order to confirm the employment eligibility of, and conduct identity verification for, their workers. Section 274A of the Immigration and Nationality Act, Pub. L. No. 82-414, title II, ch. 8, § 274A, 66 Stat. 163 (1952), as added by Pub. L. No. 99-603, title I, subtitle A, § 101(a), 100 Stat. 3359, 3360-3372 (classified, as amended, at 8 U.S.C. § 1324a).

procurement data.² USCIS administers E-Verify and can take administrative actions when companies do not follow program requirements.

You asked us to assess federal agencies' use of the E-Verify clause for federal contractors. This report addresses the extent to which (1) selected federal agencies ensured the E-Verify clause was included in selected contracts and reported that information in the Federal Procurement Data System (FPDS); (2) selected federal agencies monitored federal contractor compliance with the E-Verify clause; and (3) USCIS has taken administrative actions against federal contractors that did not comply with E-Verify program requirements.

To answer our objectives, we selected the Departments of Defense (DOD), Homeland Security (DHS), and Health and Human Services (HHS) for review. We selected these three because, from fiscal years 2019 to 2021, they were among the federal agencies with the highest number of contracts and associated obligations that appeared to be subject to the FAR's requirement for inclusion of the E-Verify clause. Collectively, these three agencies accounted for nearly two-thirds of all new awards in fiscal year 2021 that appeared to be subject to the FAR's E-Verify requirement. We used the same criteria to select two components from each agency: the Defense Logistics Agency (DLA) and the Navy at DOD, the Federal Emergency Management Agency and the U.S. Coast Guard at DHS, and the Centers for Disease Control and Prevention and the National Institutes of Health at HHS.

Within the selected components, we selected a nongeneralizable sample of 24 contracts and orders that appeared to be subject to the requirement for including the E-Verify clause in the contract and that were awarded in

²The E-Verify clause is titled Employment Eligibility Verification in the FAR, but for the purposes of this report we refer to it as the E-Verify clause. The FAR generally requires contracting officers to include the E-Verify clause in contracts that exceed \$150,000 unless the contract: (1) has a period of performance of less than 120 days; (2) is only for work performed outside the U.S.; or (3) is only for commercially available off-the-shelf items (COTS) or commercial services that are part of the purchase of a COTS item. For a full description of the exceptions, see FAR 22.1803. To determine which contracts appeared to be subject to the requirement, our analysis therefore included contracts that exceeded \$150,000, had a period of performance of at least 120 days, were for work primarily performed within the U.S., and were not COTS items. Some contracts we excluded may require the E-Verify clause, such as contracts using simplified acquisition procedures. Some of the contracts included in our analysis may not meet the criteria for inclusion of the E-Verify clause, such as contracts for the purchase of commercial services that are part of the purchase of a COTS item.

fiscal year 2021—the most recent year for which we had full-year data available when we began our review.³ Hereafter, we refer to these contracts and orders collectively as contracts, unless otherwise specified. We selected four contracts from each component—randomly selecting two in which FPDS data indicated the E-Verify clause was included in the contract and two where the data indicated the clause was not present—for a total of eight contracts for each agency. We also randomly selected six subcontracts from our sample of 24 prime contracts—one from each component—to determine whether the prime contractors included the E-Verify clause in their subcontracts.⁴ We also interviewed representatives of six prime contractors to confirm whether they included the E-Verify clause in selected subcontracts and to determine their processes for including the E-Verify clause in applicable subcontracts.

To assess the extent to which selected federal agencies ensured the E-Verify clause was included in contracts when required and accurately reported that information in FPDS for our sample of contracts, we reviewed contract file documents and FPDS data for the selected contracts and subcontracts. We interviewed agency contracting officials responsible for the selected contracts, including 24 contracting officers. Additionally, we interviewed General Services Administration officials responsible for administering FPDS to determine when the inclusion of the E-Verify clause in a contract should be reported within the system.

To address federal monitoring of contractor compliance (E-Verify enrollment and use) and USCIS actions for noncompliance, we reviewed the FAR and selected agency guidance relating to E-Verify. We analyzed USCIS data on selected contractors' enrollment and use of E-Verify. We also analyzed USCIS data on federal contractor E-Verify account terminations for fiscal years 2009—when the FAR was amended to require federal contractors to use E-Verify under certain federal contracts—to March 2023. We assessed USCIS's efforts to provide

³Our selection methodology included both contracts and orders placed under indefinite-delivery contracts. Indefinite-delivery contracts may be used when the exact times and/or exact quantities of required products or services are not known at the time of award. An indefinite-delivery contract provides for the issuance of orders, which are used to procure specific products or services during the period of the contract.

⁴A prime contractor is the entity with which the federal government has entered into a contract. A subcontractor is a supplier, distributor, or vendor that furnishes supplies or services for the performance of a prime contract or a subcontract. The FAR generally requires that when the E-Verify clause is included in a prime contract, the prime contractor must include the requirements of the clause in subcontracts valued above \$3,500 for services or construction to be performed in the U.S. FAR 22.1802(b)(4), 52.222-54(e).

agencies with tools and information on contractor participation in E-Verify. We also assessed USCIS's actions for noncompliance, including account terminations and referrals related to such terminations.⁵ We also interviewed agency suspension and debarment officials; USCIS officials with E-Verify-related responsibilities; and Office of Management and Budget (OMB), Office of Federal Procurement Policy staff responsible for federal procurement policy about agency roles and responsibilities related to federal contractor use of E-Verify.⁶ See appendix I for additional details about our objectives, scope, and methodology.

We conducted this performance audit from August 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

E-Verify Legislative and Regulatory History

The Immigration Reform and Control Act of 1986 made it unlawful for employers to knowingly hire, recruit or refer for a fee, or continue to employ noncitizens who are not authorized to work in the U.S.; and required employers to verify employees' work authorization. The employment eligibility verification process—the Form I-9 process—requires employers to review documents presented by new employees to establish their identity and employment eligibility.⁷ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created pilot programs,

⁵FAR 22.1802(e) states that DHS and the Social Security Administration 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. FAR 22.1802(e) further states that if DHS or the Social Security Administration terminates a contractor's MOU, the terminating agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. USCIS officials told us that sometime between 2007 and 2013, the Social Security Administration asked to be removed from the E-Verify MOU, and DHS agreed to do so. Thus, at present, the Social Security Administration takes no actions related to FAR 22.1802(e). The Social Security Administration still plays a role in resolving issues related to the accuracy of employee-submitted data.

⁶Throughout this report we refer to OMB and the Office of Federal Procurement Policy collectively as OMB.

⁷Section 274A of the Immigration and Nationality Act, Pub. L. No. 82-414, title II, ch. 8, § 274A, 66 Stat. 163 (1952), as added by Pub. L. No. 99-603, title I, subtitle A, § 101(a), 100 Stat. 3359, 3360-3372 (classified, as amended, at 8 U.S.C. § 1324a).

including the Basic Pilot Program that later became the E-Verify program, for employment eligibility confirmation.⁸ USCIS administers the E-Verify program. E-Verify is a largely voluntary program for most employers. However, executive departments and agencies are required to use it by OMB directive, and certain federal contractors are required to use it by regulation, as a condition of their contracts.⁹

In 2009, the FAR was amended to require that federal contractors use E-Verify to electronically verify the employment eligibility of employees working under certain federal contracts. Specifically, the FAR generally requires contracting officers to include the E-Verify clause in all solicitations and contracts that exceed \$150,000 unless the contract:

- has a period of performance of less than 120 days;
- is only for work performed outside the U.S.; or

⁸Pub. L. No. 104-208, div. C, title IV, subtitle A, §§ 401-405, 110 Stat. 3009, 3009-655 to 3009-666 (classified, as amended, at 8 U.S.C. § 1324a note). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created employment eligibility confirmation pilot programs that were to terminate 4 years after going into effect, unless Congress provided otherwise. Under the Basic Pilot Program and now the E-Verify Program, a person or other entity that elects to participate agrees to conform to certain procedures in the case of the hiring (or recruitment or referral) for employment in the U.S. of each covered individual, to include obtaining from the individual (and the individual shall provide) and recording on the I-9 or similar form the individual's social security number (if he or she has one), and if the individual does not attest to U.S. citizenship under the Immigration and Nationality Act § 274A(b)(2), such identification or authorization number as the Secretary of Homeland Security shall specify, and retaining the original and making it available for inspection for the specified period and in the manner required of I-9 forms under Immigration and Nationality Act § 274A(b)(3). See 8 U.S.C. § 1324a note. The Basic Pilot Program was first extended in 2002 by the Basic Pilot Extension Act of 2001. The E-Verify program was most recently extended until September 2023. Pub. L. No. 107-128, 115 Stat. 2407 (2002); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. O, title III, § 301, 136 Stat. 4459, 5227 (2022).

⁹Pursuant to a 2007 OMB directive, all federal departments and agencies are to verify their new hires through E-Verify. Stephen S. McMillin, Acting Dir., Office of Mgmt. & Budget, *Memorandum for the Heads of Departments and Agencies: Verifying the Employment Eligibility of Federal Employees*, M-07-21 (Aug. 10, 2007). For statutory background, see 8 U.S.C. § 1324a note, as amended (in particular, section 402(e) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). Pursuant to policies and procedures in FAR subpart 22.18, federal contractors must use E-Verify to electronically verify the employment eligibility of employees working under certain federal contracts. In addition, we previously reported that a number of states enacted laws or issued executive orders mandating that some or all employers within the state use E-Verify to verify the employment eligibility of new hires as a condition of business licensing or contracting in that state. See GAO, *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain*, [GAO-11-146](#) (Washington, D.C.: Dec. 17, 2010).

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- is only for commercially available off-the-shelf (COTS) items or commercial services that are part of the purchase of a COTS item.¹⁰

The E-Verify clause generally requires that federal contractors enroll in the program and use it to verify the employment eligibility of new employees and employees assigned to the contract within certain time frames. The clause also requires federal prime contractors to include the E-Verify clause in certain subcontracts.¹¹ The E-Verify clause does not require federal contractors to verify the employment eligibility of certain previously verified individuals, such as employees who have specified security clearances or credentials.¹²

In 2018, the General Services Administration (which manages FPDS) added the Employment Eligibility Verification option within the “Additional Reporting” data field within FPDS to indicate if a contract contains the E-Verify clause. According to FPDS guidance, agencies are to report the applicable response to this data field for all contracts awarded on or after July 11, 2018.

USCIS Roles and Responsibilities Related to Federal Contractor Use of E-Verify

Federal contractors and other employers sign an E-Verify memorandum of understanding (MOU) with DHS to participate in the program. USCIS’s Immigration Records and Identity Services Directorate is responsible for ensuring employers comply with the terms outlined in the MOU. For federal contractors, the E-Verify MOU establishes that (1) compliance with the MOU is a performance requirement under the terms of the federal contract or subcontract; and (2) termination of the MOU may negatively affect the contractor’s performance of contractual responsibilities.

USCIS maintains data on employers’ enrollment and use of the E-Verify system, including their status as federal contractors. When employers

¹⁰For a full description of the exceptions, see FAR 22.1803.

¹¹Specifically, the E-Verify clause requires the prime contractor to include the requirements of the E-Verify clause in each subcontract that is for services (except for commercial services that are part of the purchase of a COTS item, performed by the COTS provider, and are normally provided for that COTS item) or construction, and that has (1) a value of more than \$3,500 and (2) includes work performed in the U.S. FAR 52.222-54(e).

¹²The E-Verify clause states that the contractor is not required to use E-Verify for any employee: (1) whose employment eligibility the contractor previously verified through E-Verify; (2) who holds an active U.S. government security clearance; or (3) who has credentials pursuant to Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors. FAR 52.222-42(d).

enroll in E-Verify, they must self-identify whether they are a federal contractor and indicate whether they have a contract that contains the FAR E-Verify clause. USCIS creates resources, such as an enrollment guide, to help federal contractors and other users understand their E-Verify-related responsibilities to enroll in and use the E-Verify system. USCIS also provides resources and data to federal contracting officials to help them monitor contractor compliance with the E-Verify clause.

USCIS can take several administrative actions if an employer, including a federal contractor, does not comply with the terms of its E-Verify MOU. For example, USCIS can email employers to remind them of their responsibilities, request to review their hiring documentation, refer the employer to law enforcement agencies such as U.S. Immigration and Customs Enforcement, or terminate the employer's E-Verify account.¹³ USCIS officials stated that they can terminate an E-Verify account upon an employer's request for administrative reasons, such as company mergers. USCIS may also terminate an employer's E-Verify account for non-use and misuse of the E-Verify system—violations of the MOU's terms.

- **Non-use termination.** USCIS's termination guidance defines non-use as when an enrolled employer never uses the system to verify employees, creates additional accounts it does not use, or stops verifying employees for an extended period after initial use. According to USCIS procedures, it may terminate accounts for employers that have not verified any employees or updated their account information for 3 years.¹⁴

¹³According to USCIS officials, in these circumstances, USCIS terminates the MOU and removes the employer's access to its E-Verify account. Throughout this report, we refer to this as terminating the account or terminating the MOU based on USCIS documentation and interviews.

¹⁴We discuss the implications of non-use terminations as they pertain to federal contractors later in this report.

Unresolved tentative nonconfirmations.

A tentative nonconfirmation occurs when E-Verify is initially unable to confirm an employee's eligibility to work in the U.S. Employers are required to inform the employee of the tentative nonconfirmation and the employee's right to take action to resolve it. If an employee decides to take action to resolve it, the employer must electronically refer the tentative nonconfirmation case in E-Verify to either the Social Security Administration, the Department of Homeland Security, or both. If an employee decides not to take action to resolve the tentative nonconfirmation, the employer must close the case in the E-Verify system. The U.S. Citizenship and Immigration Services (USCIS) considers a tentative nonconfirmation to be unresolved when an employer fails to refer or close a tentative nonconfirmation within 10 government business days.

Source: GAO analysis of USCIS E-Verify documentation. | GAO-24-106219

- **Misuse termination.** USCIS's termination guidance defines misuse as when an employer fails to comply with E-Verify procedures in the MOU or has not cooperated with USCIS. Examples of termination for misuse include evidence of discrimination, failure to protect employee personally identifiable information, and unresolved tentative nonconfirmations.

As part of its account termination procedures, USCIS provides employers with a 30-day notice of intent to terminate that provides the basis for the termination and instructions for how to prevent it. The FAR requires that if DHS terminates a federal contractor's MOU, it must refer that contractor to a suspension or debarment official for possible suspension or debarment action.¹⁵ This referral process is addressed in more detail below.

Federal Agency Roles and Responsibilities Related to Federal Contractor Use of E-Verify

Within the agencies we selected for review, department-level procurement policy is set by DHS's Office of the Chief Procurement Officer, DOD's Office of Defense Pricing and Contracting, and HHS's Office of Acquisitions. Individual components within each agency also have offices responsible for component-level contracting policy. Finally, each component has multiple contracting offices, led by an office chief (or similar role) overseeing contracting staff. Agency contracting officers are

¹⁵FAR 22.1802(e) states, "DHS and the Social Security Administration 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 the Social Security Administration terminates a contractor's MOU, the terminating agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment 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 or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must reenroll in E-Verify." As noted above, according to USCIS, the Social Security Administration asked to be removed from the E-Verify MOU and DHS agreed to do so. Thus, at present, the Social Security Administration takes no actions related to FAR 22.1802(e). The Social Security Administration still plays a role in resolving issues related to the accuracy of employee-submitted data.

generally responsible for ensuring that contractors comply with the terms of the contract, such as the E-Verify clause.

As discussed above, if DHS terminates a contractor's MOU, DHS must refer the contractor to an agency suspension or debarment official for a possible suspension or debarment action.

- **Suspension** temporarily disqualifies a contractor from government contracting and government-approved subcontracting pending the completion of an investigation or legal proceeding.
- **Debarment** excludes a contractor from government contracting and government-approved subcontracting for a reasonable, specified period of time—generally no more than 3 years.

Under the FAR, agencies are to establish procedures for suspension and debarment referrals.¹⁶ According to the Interagency Suspension and Debarment Committee, a suspension and debarment referral is a written request, supported by documentary evidence, and presented to the agency suspension and debarment official for consideration. Upon receiving a referral, agency suspension and debarment officials are responsible for deciding whether it is in the government's or the public's interest to suspend or debar federal contractors for certain causes, using procedures in the FAR.¹⁷ When more than one agency has an interest in the suspension or debarment of a contractor, the Interagency Suspension and Debarment Committee resolves the lead agency issue and coordinates the resolution among all interested agencies prior to the initiation of any suspension, debarment, or related action.¹⁸

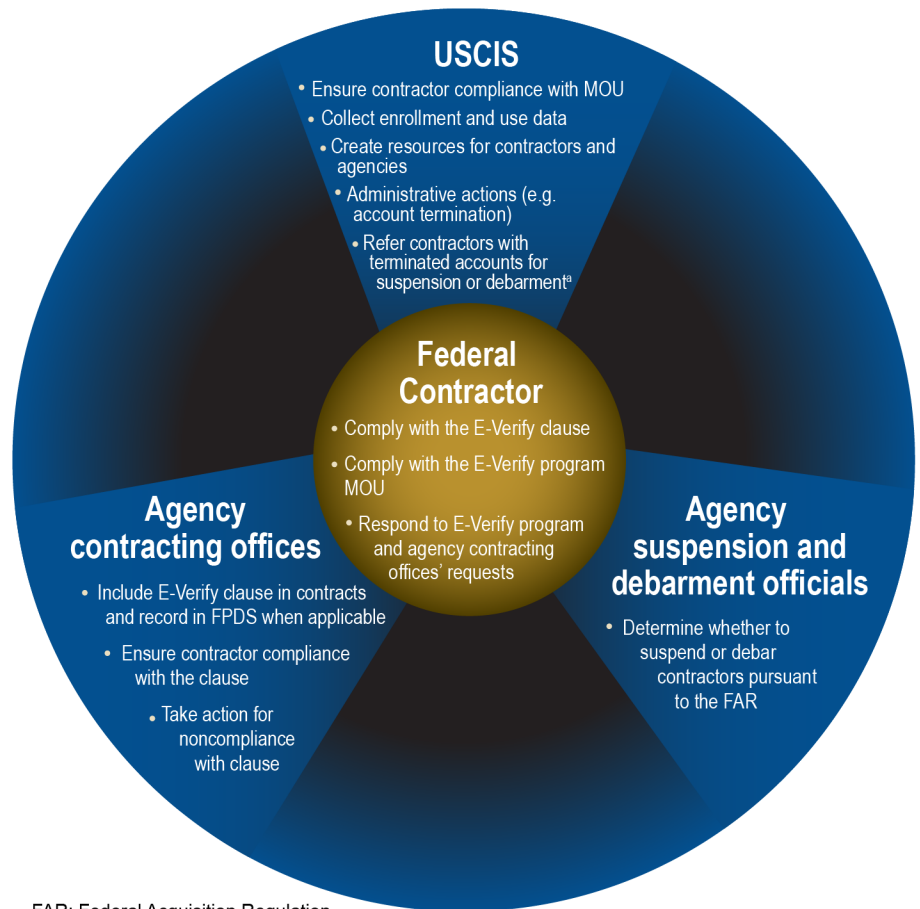
¹⁶FAR 9.406-3(a); FAR 9.407-3(a).

¹⁷See FAR subpart 9.4. We have reported on a variety of issues involving suspensions and debarments under the FAR. See GAO, *Federal Contracts and Grants: Agencies Have Taken Steps to Improve Suspension and Debarment Programs*, [GAO-14-513](#) (Washington, D.C.: May 21, 2014); and *Suspension and Debarment: Characteristics of Active Agency Programs and Governmentwide Oversight Efforts*, [GAO-13-707T](#) (Washington, D.C.: June 12, 2013).

¹⁸FAR 9.402(d). The Interagency Suspension and Debarment Committee is an interagency body created by Executive Order 12,549, 51 Fed. Reg. 6,370 (Feb. 18, 1986), consisting chiefly of representatives from executive branch organizations that work together to provide support for suspension and debarment programs throughout the government. The committee reports to Congress annually on the status of the federal suspension and debarment system, pursuant to section 873 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Pub. L. No. 110-417, § 873(a)(7) (2008) (codified as amended at 31 U.S.C. § 6101 note).

Figure 1 illustrates the roles and responsibilities of USCIS, agencies' contracting and suspension and debarment officials, and federal contractors related to the use of E-Verify.

Figure 1: Roles and Responsibilities Related to Federal Contractor Use of E-Verify



FAR: Federal Acquisition Regulation
 FPDS: Federal Procurement Data System
 MOU: Memorandum of Understanding
 USCIS: U.S. Citizenship and Immigration Services

Source: GAO analysis of USCIS and FAR documents. | GAO-24-106219

^aFAR 22.1802(e) establishes that if DHS terminates a federal contractor's E-Verify MOU, DHS must refer the federal contractor to a suspension or debarment official for a possible suspension or debarment action. USCIS lists on its website those federal contractors whose E-Verify MOUs have been terminated.

Agencies Included the E-Verify Clause in Most Selected Contracts, but Did Not Accurately Report It in FPDS

DOD, DHS, and HHS contracting officials generally included, when required, the E-Verify clause in selected contracts. At the component level, DLA contracting officials did not consistently do so but took steps to address the factors that contributed to omission of the clause during our review. Contracting officials from the three agencies, however, did not always report the E-Verify clause's presence in FPDS as instructed by FPDS guidance and cited several factors contributing to this inconsistency. Based on fiscal year 2021 data, we also identified potential accuracy issues government-wide with the FPDS field that reflects the presence of the E-Verify clause.

Selected Agencies Included the E-Verify Clause in Most Contracts in Our Sample

Contracting officials at the agencies we reviewed—DOD, DHS, and HHS—included the E-Verify clause in 22 out of 24 contracts in our sample (see table 1). For the six subcontracts included in our review, we found that prime contractors inserted the E-Verify clause in five of them.¹⁹

Table 1: Number of Selected Contracts Containing the E-Verify Clause

Agency	Number of selected contracts with the E-Verify clause	Total number of selected contracts that should have included the E-Verify clause
Department of Defense (DOD)	6	8
Department of Homeland Security (DHS)	8	8
Department of Health and Human Services (HHS)	8	8
Total	22	24

Source: GAO analysis of DOD, DHS, and HHS contract files and interviews with contracting officials. | GAO-24-106219

Note: Our sample selection included both definitive contracts and orders placed under indefinite-delivery contracts. For the purposes of the analysis, if we selected an order under an indefinite-delivery contract, and if the indefinite-delivery contract included the E-Verify clause and indicated that orders under the contract were subject to the terms and conditions of the contract, we considered the E-Verify clause to be included in the order. Indefinite-delivery contracts may be used when the exact times and/or exact quantities of required products or services are not known at the time of award. An indefinite-delivery contract provides for the issuance of orders, which are used to procure specific products or services during the period of the contract.

Contracting officials at the agencies we reviewed relied on a variety of resources to determine whether to include the E-Verify clause in applicable contracts. They stated that they generally relied on the FAR to

¹⁹We asked the contractor for the remaining subcontract why it did not include the E-Verify clause in the subcontract. Contractor representatives told us that they generally include the E-Verify clause in their subcontracts, but did not include it in the one in our sample because it was an independent consultant agreement. The agreement's period of performance of about 9 months ended in September 2022.

make this decision. The FAR requires inclusion of the E-Verify clause in all contracts that exceed \$150,000, with certain exceptions as discussed above.²⁰ Contracting officials also highlighted other resources:

- **DHS E-Verify job aid and related guidance.** Contracting officials at three of the six components we reviewed noted that they use DHS's E-Verify job aid, which includes detailed instructions on when to include the E-Verify clause in contracts in accordance with the FAR. DHS emailed the federal contracting community in October 2019 with guidance on ensuring contractor compliance with E-Verify requirements and subsequently issued the job aid in March 2021. Officials at the two HHS components we reviewed—Centers for Disease Control and Prevention and the National Institutes of Health—stated that they also refer to an HHS acquisition policy reminder, which they said was based on DHS's E-Verify guidance.
- **Contract clause matrixes.** Contracting officials at the Coast Guard, DLA, and the Navy said that their agencies use component-specific contract clause matrixes—a list of clauses that may be required in the contract—for E-Verify guidance. For example, the Navy and Coast Guard use contract clause matrixes that contain a list of potentially applicable clauses based on certain contract parameters. According to Navy and Coast Guard officials, these matrixes help contracting officials select all applicable contract clauses, including the E-Verify clause.
- **Electronic contract writing systems.** Contracting officials at five components said that they rely on electronic contract writing systems to prompt them to include the E-Verify clause in applicable federal contracts.
- **Pre-award reviews.** Contracting officials at five components told us they rely on supervising procurement officials to conduct pre-award reviews to ensure that contracts include all applicable contract clauses, including the E-Verify clause.

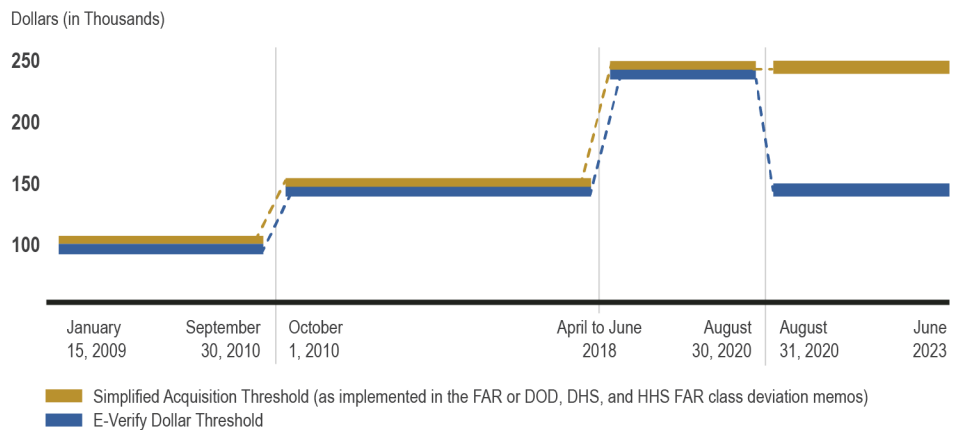
In contrast to the other components, DLA contracting officials did not include the E-Verify clause in two of the four contracts we reviewed that were awarded in 2021. They attributed these omissions to confusion about the relationship between the E-Verify dollar threshold and the simplified acquisition threshold.²¹ The two thresholds were set at the

²⁰FAR 22.1803.

²¹For purchases at or below the simplified acquisition threshold, agencies may use streamlined procurement procedures, called simplified acquisition procedures.

same dollar amount until August 2020, when the FAR was revised to implement an increase to the simplified acquisition threshold under the National Defense Authorization Act for Fiscal Year 2018 (see fig. 2).²²

Figure 2: Evolution of E-Verify Dollar and Simplified Acquisition Thresholds



Source: GAO analysis of Federal Acquisition Regulation (FAR) documents and Department of Defense (DOD), Department of Homeland Security (DHS), and Department of Health and Human Services (HHS) FAR class deviation memos. | GAO-24-106219

Note: The National Defense Authorization Act of Fiscal Year 2018 increased the simplified acquisition threshold to \$250,000, but the increase was not implemented in the FAR—and the dollar threshold for the E-Verify clause was not separated from the simplified acquisition threshold—until August 31, 2020. In the interim, individual agencies implemented the statutory increase to the simplified acquisition threshold through class deviations to the FAR. For example, DOD issued a FAR class deviation memo to implement the increase as of April 2018 and DHS and HHS did so as well as of June 2018.

DOD, the General Services Administration, and the National Aeronautics and Space Administration issued a final rule in July 2020 to amend the FAR to reflect the statutory increase of the simplified acquisition threshold to \$250,000, with an effective date of August 31, 2020.²³ At the same time, however, the final rule revised the FAR to establish that the E-Verify dollar threshold would remain at \$150,000.²⁴

²²National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 805 (2017).

²³The FAR is prepared, issued, and maintained jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their statutory authorities, and in consultation with the Administrator of the Office of Federal Procurement Policy. See 41 U.S.C. ch. 13; FAR 1.103.

²⁴See 85 Fed. Reg. 40,064, 40,065, 40,067 (July 2, 2020).

DLA contracting officials said that they updated their acquisition guidance to reflect the increased simplified acquisition threshold, but did not update it to reflect that the E-Verify dollar threshold remained at \$150,000. This led to confusion among DLA contracting staff regarding when to include the E-Verify clause in contracts. DLA officials also said that they use an automated contract writing system for most awards below the simplified acquisition threshold. However, the system was not set up to insert the E-Verify clause in all applicable contracts because it also was not updated to reflect that the E-Verify dollar threshold remained at \$150,000. As a result, the officials told us that they incorrectly omitted the E-Verify clause in contracts between \$150,000 and \$250,000 that met the E-Verify requirements from August 2020 to April 2023.

After we brought these omissions to their attention, DLA contracting officials took several actions to ensure the E-Verify clause is included in future contracts as appropriate. For example, they updated DLA's automated contract writing system to reflect the \$150,000 threshold for the E-Verify clause, and DLA officials said that contracting officials would determine whether or not the contract meets the FAR's requirement for inclusion of the E-Verify clause and include the clause accordingly. DLA also updated its acquisition guidance in June 2023 to reflect the \$150,000 E-Verify dollar threshold.

DLA contracting officials cited other non-DLA sources they use, which we found also contained incorrect information on the dollar threshold for the E-Verify clause. For example, they said that they rely on the Defense Acquisition University's contract clause matrix, which incorrectly listed the simplified acquisition threshold as the threshold for the E-Verify clause. In addition, USCIS's E-Verify website and Supplemental Guide for Federal Contractors also incorrectly listed the simplified acquisition threshold as the threshold for the use of the E-Verify clause. We contacted the Defense Acquisition University and USCIS about these discrepancies and they revised these sources to include the correct E-Verify dollar threshold.

Contracting Officials Did Not Accurately Report the E-Verify Clause in FPDS for Selected Contracts

In our analysis of 24 contracts, we found that DOD, DHS, and HHS contracting officials did not always accurately report information in FPDS about whether the E-Verify clause was included in a contract, as instructed by FPDS guidance. We selected the 24 contracts in our sample based on their FPDS records indicating that they appeared to be subject

to the FAR's requirement for including the E-Verify clause.²⁵ Of the 24 contracts we selected, 12 had FPDS records indicating that the clause was not included, and 12 had FPDS records indicating it was.²⁶

For the 12 contracts with FPDS records indicating that the clause was not included, we found that 10 included the clause, meaning the FPDS records were inaccurate for these contracts. Specifically, the Coast Guard, Federal Emergency Management Agency, Navy, National Institutes of Health, and Centers for Disease Control and Prevention each awarded two contracts or orders in our sample that included the clause in the selected contract or, in the case of orders, in the base contract, but did not report the clause's presence in FPDS. As discussed earlier, the other two contracts were awarded by DLA and did not include the E-Verify clause in the contract, even though they were subject to the clause under the FAR's requirement.²⁷ DOD, DHS, and HHS contracting officials provided a variety of reasons for this inaccuracy. The most commonly cited reason was human error. DLA contracting officials also cited confusion surrounding the E-Verify dollar threshold, which, as previously discussed, led them to not include the clause in the contract.

For the 12 contracts we selected where the FPDS records indicated the clause was included, we saw evidence in the contract documents that the clause was included, which corroborated the FPDS reporting. DOD, DHS, and HHS contracting officials cited several resources that contributed to their understanding of how to accurately report use of the clause. For example, the FPDS Data Element Dictionary states that system users should select the applicable reporting requirement for the contract, with the E-Verify clause as one of the available responses. Other documents, such as the DHS E-Verify job aid and the Defense Federal Acquisition Regulation Supplement's Procedures, Guidance, and Information, also include guidance on when, how, and where to mark the E-Verify response in FPDS. Some components also took additional steps to ensure that the use of the E-Verify clause was appropriately reported in FPDS. For example, the National Institutes of Health and Centers for Disease Control and Prevention used third-party service providers to identify

²⁵See our objectives, scope, and methodology in appendix I for additional details on how we selected the 24 contracts in our sample.

²⁶The relevant data element within FPDS that is intended to reflect whether the E-Verify clause was included in a contract is the "Employment Eligibility Verification (52.222-54)" response in the Additional Reporting field.

²⁷See FAR 22.1803.

FPDS discrepancies, and a Federal Emergency Management Agency policy office added the FPDS field for the E-Verify clause to its post-award review processes.

Although agency reporting in FPDS for these 12 contracts accurately reflected that the clause was included in the base contract, we found that agencies did not always accurately report the use of the E-Verify clause in orders issued under indefinite-delivery contracts. Specifically, the FPDS records for four orders we reviewed showed that the orders were not properly reported in FPDS to indicate that the underlying contract included the E-Verify clause.²⁸ The FPDS Data Element Dictionary and the DHS E-Verify job aid indicate that the FPDS field for the E-Verify clause needs to be marked each time an E-Verify-eligible order is placed under an indefinite-delivery contract that includes the E-Verify clause. However, contracting officials told us that they were unaware of the need to mark this FPDS field for such orders.

According to *Standards for Internal Control in the Federal Government*, agencies should communicate quality information externally to help achieve agency objectives.²⁹ Furthermore, the FPDS Data Element Dictionary instructs contracting officials to record the E-Verify clause's presence in FPDS for applicable contracts, including orders under indefinite-delivery contracts. Congress and executive branch agencies rely on FPDS to assess the effects of government-wide acquisition policies and processes. Without taking steps at DOD, DHS, and HHS to ensure contracting staff accurately report information about the E-Verify clause in FPDS for applicable contracts and orders, these agencies and Congress will not have accurate information on these agencies' use of the E-Verify clause for federal contractors.

FPDS Data Appears to Indicate Government-Wide Accuracy Issues with E-Verify Field

Beyond the 24 contracts, we also reviewed FPDS data on the number of contracts awarded government-wide in fiscal year 2021 that would appear

²⁸We also reviewed the FPDS records for the base indefinite-delivery contracts under which these orders were placed. In each case, the FPDS records indicated that the base contracts included the E-Verify clause.

²⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

to be subject to the FAR's E-Verify requirement.³⁰ Our analysis did not allow us to conclusively determine whether the E-Verify clause should have been included in each contract, and thus whether use of the E-Verify clause was accurately reported in FPDS. It did, however, indicate that contracting officials across the government did not always report use of the E-Verify clause in FPDS when the contract appeared to be subject to the FAR's E-Verify requirement. Specifically, of the approximately 74,000 fiscal year 2021 contract awards that appeared to be subject to the FAR's E-Verify requirement and for which we might therefore expect the clause to be included, only about 15 percent were reported in FPDS as using the E-Verify clause.

For the six components we selected for our review, where FPDS indicated there were contracts and orders that were subject to the FAR's requirement for use of the E-Verify clause, our analysis found:

- National Institutes of Health and Centers for Disease Control and Prevention contracting officials reported use of the E-Verify clause in FPDS about 53 percent and about 43 percent of time, respectively.
- Coast Guard and Federal Emergency Management Agency contracting officials reported use of the E-Verify clause in FPDS about 36 percent and about 16 percent of the time, respectively.
- Navy and DLA contracting officials reported use of the E-Verify clause in FPDS about 6 percent and about 2 percent of the time, respectively.

There are three potential reasons why contracting officials may not report use of the E-Verify clause in FPDS for contracts that appear to be subject to the FAR E-Verify requirement. First, some of the contracts we included in our analysis may not actually be subject to the requirement for including the E-Verify clause, such as contracts for the purchase of commercial services that are part of the purchase of a COTS item. Second, agencies may have incorrectly omitted the E-Verify clause from the contract, despite the contract being subject to the FAR requirement to include the clause. Third, agencies may have included the clause correctly, but reported inaccurate information to FPDS. For example, as indicated earlier, contracting officials for 12 of the 24 contracts we

³⁰Specifically, we identified contracts that agencies reported in FPDS as exceeding \$150,000, having a period of performance of at least 120 days, having work primarily performed within the U.S., and involving the purchase of non-COTS items.

reviewed did not report use of the clause in the FPDS Additional Reporting field, which they attributed in part to human error.

According to the FAR and related guidance, agency chief acquisition officers must annually submit to the General Services Administration a certification of whether, and to what degree, their agency contract data in FPDS are accurate and complete.³¹ OMB, in collaboration with other federal agencies, establishes which data fields must be included in this annual verification and validation process. According to an OMB memorandum, the goals of this process include ensuring that FPDS data are reported properly so that the government has the right information when planning and awarding contracts and that the public has reliable data to track how its tax dollars are spent.³² However, the Additional Reporting field is not currently included among the data fields subject to this annual verification and validation process. The Digital Accountability and Transparency Act of 2014 also calls for improving the quality of data submitted to USAspending.gov—a public-facing website that pulls federal procurement data from FPDS—by holding federal agencies accountable for the completeness and accuracy of the data submitted.³³ Without OMB directing agencies to ensure the accuracy of their data in FPDS’s Additional Reporting field, users of federal procurement data—such as Congress and the public—do not have the information required to know whether federal contracts included the E-Verify clause as required.

Selected Agencies Varied in Monitoring Contractor E-Verify Compliance and Lack Data from USCIS for This Duty

DHS, DOD, and HHS contracting officials differed in whether they took steps to monitor contractor compliance with the E-Verify clause (enrollment in and use of the program) in part because they had different understandings of their responsibilities. Contracting officials who took steps to monitor contractor compliance relied on USCIS reports that identified contractor enrollment and use, but USCIS discontinued these reports in March 2022 in part due to data limitations. Since then, USCIS has communicated limited information to agencies for monitoring contractor compliance with E-Verify.

³¹FAR 4.604(c).

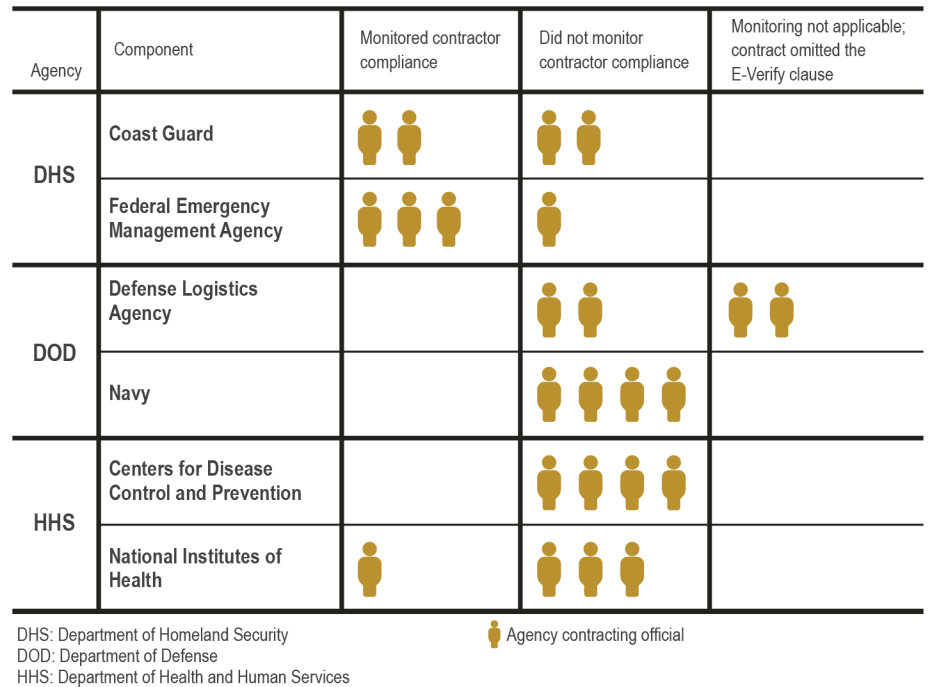
³²Office of Management and Budget, *Improving Federal Procurement Data Quality – Guidance for Annual Verification and Validation*, Office of Federal Procurement Policy Memorandum to Chief Acquisition Officers, Senior Procurement Executives, and Small Agency Council Members (Washington, D.C.: May 31, 2011).

³³Pub. L. No. 113-101 (2014) (codified as amended at 31 U.S.C. § 6101 note).

Selected Agencies Varied in Monitoring Contractor Compliance in Part Due to Differing Understandings of Responsibilities

DHS, DOD, and HHS contracting officials we interviewed differed as to whether they took any steps to monitor their contractors' compliance with the E-Verify clause for the 24 contracts in our sample. For example, within DHS, a majority of the contracting officials we interviewed said they took some steps, whereas none of the DOD contracting officials we interviewed did so (see fig. 3).

Figure 3: Contracting Officials' Reported Monitoring of Contractor Compliance with the E-Verify Clause for 24 Contracts GAO Reviewed



Source: GAO interviews of selected agency contracting officials; GAO (icons). | GAO-24-106219

When contracting officials did take steps to monitor contractor compliance, they took a variety of actions, such as consulting USCIS reports on contractors' E-Verify enrollment and use. USCIS began issuing these quarterly reports in fiscal year 2020 to senior procurement officials throughout the government but stopped issuing them in 2022 due to data limitations, as discussed below. The reports included a list of federal contractors and whether they enrolled in and used E-Verify, among other things. DHS's E-Verify job aid states that agencies should review the quarterly reports and take specific follow-up actions where the data indicate a contractor may not be complying with requirements of the E-

Verify clause. For example, the job aid states that agencies notify the contractor and then follow-up with USCIS if the contractor confirms they have enrolled in or used E-Verify.

Among contracting staff who did take steps to monitor contractor compliance, three of six reported that they had identified potential noncompliance with E-Verify in the past. All three said they had resolved the issues through informal actions, such as emailing the contractor. Only one of the five suspension and debarment offices we interviewed indicated they had ever received a referral to consider suspension or debarment of a federal contractor for E-Verify-related noncompliance. According to officials from that suspension and debarment office, that referral was subsequently closed with no action in part because the contract had already ended.

Agency officials we spoke with identified a variety of reasons why they did not take steps to monitor whether contractors enrolled in and used E-Verify in compliance with the E-Verify clause.³⁴ Among contracting officials we spoke with who said they did not monitor contractor compliance, 12 of 16 officials said it was because there is no requirement to do so or they thought another agency was responsible.³⁵ Further, DOD acquisition policy officials told us that contracting officials' roles are limited to including the clause in contracts and reporting that information in FPDS. They stated that monitoring contractor compliance with the E-Verify clause is DHS's responsibility as the program administrator for E-Verify.

Defense Contract Management Agency officials—who administer some DOD contracts when delegated—agreed with DOD acquisition policy officials' comments that contracting officials are not responsible for monitoring contractor compliance with the E-Verify clause. In explaining their rationale, they referenced a statement in the final rule that

³⁴We summarize the most common reasons given by these officials. Some officials gave various reasons that were not reflected by the group at large, such as the contract being cancelled soon after it was awarded or assuming that contractors would comply with the E-Verify clause as a contractual requirement.

³⁵Officials who said they thought another agency was responsible generally said they either expected DHS (as the E-Verify program administrators) or the Defense Contract Management Agency (which administers some DOD contracts when delegated) to be responsible for ensuring contractors complied with the E-Verify clause. Defense Contract Management Agency officials said they manage certain contract administration functions as delegated and that E-Verify compliance had never been one of these delegated responsibilities.

established the FAR E-Verify clause related to whether the proposed rule considered the costs associated with contracting officer time and effort. According to the statement, “contracting officer duties under the final rule consist almost exclusively of inserting the clause into appropriate solicitations and contracts,” and therefore, the associated effort for contracting officers would be marginal.³⁶ Defense Contract Management Agency officials told us they interpreted this statement to mean that a contracting officer is not responsible for monitoring contractor compliance with E-Verify. However, staff from OMB responsible for directing government-wide procurement policy said that this statement was not a direction to agencies on how to implement the E-Verify clause, but was rather part of the response to public comments on the proposed rule. They told us they would not expect agencies to take direction from a response to public comments on a proposed rule.

Instead, OMB pointed to USCIS’s previously produced FAR contractor reports, which were intended to provide agencies with information so that they could take action to resolve potential noncompliance. As noted earlier, some contracting officials we spoke with used these reports to help monitor compliance. However, USCIS officials said agencies varied in whether they followed up on these reports with USCIS, as the job aid states they should do. For example, they said HHS contracting officials have followed up, while DOD contracting officials have not. USCIS officials said it is challenging to coordinate with agencies when they perceive that some agency officials place a low priority on ensuring E-Verify compliance among contractors. Further, USCIS stopped issuing the reports in 2022, as discussed below.

Nearly all of the 24 federal contractors in our sample were enrolled in E-Verify, according to MOUs provided to us by USCIS. For the one contractor that we found was not enrolled, the agency’s contracting officials did not take timely action in response to information in USCIS’s report that indicated the contractor was not enrolled. In particular, according to USCIS, one of the 24 contractors—awarded a contract in September 2021—had not enrolled in E-Verify. A USCIS report to agencies dated March 2022 stated that this contractor, among others, was potentially noncompliant with E-Verify requirements. However, the contracting officials did not take action until they checked USCIS’s report

³⁶See 73 Fed. Reg. 67,651, 67,698 (Nov. 14, 2008). The statement was made by the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council, in response to a public comment about whether the proposed rule considered the cost associated with contracting officer time and effort.

in response to our review and saw that the contractor was not enrolled. The officials told us they contacted the contractor using a USCIS form letter. The contractor subsequently enrolled in E-Verify in February 2023.

The FAR states that contracting officer responsibilities include ensuring compliance with the terms of a contract.³⁷ OMB staff told us they agreed with the DHS E-Verify job aid's guidance, which suggests that agencies review the USCIS quarterly reports and take follow-up actions as needed to ensure contractor compliance. OMB staff said that until we brought it to their attention, they were unaware of any challenges related to agency confusion over their responsibilities for monitoring E-Verify compliance.

According to OMB staff, OMB monitors issues in the federal contracting community and takes steps as necessary to resolve confusion and disagreement that it becomes aware of regarding agency responsibilities under the FAR. OMB staff said they have taken different approaches to resolve confusion on other topics depending on the circumstances. For example, they said OMB has issued clarifying guidance to address serious risks and issued "myth-busting" memos to resolve more minor inefficiencies caused by misunderstandings.

Though OMB staff expect agencies to use USCIS reports to monitor contractor E-Verify compliance, contracting officials were not always aware of this expectation. According to *Standards for Internal Control in the Federal Government*, control activities are generally more precise when they are routine and consistent rather than sporadic.³⁸ Without action to ensure that agencies have a consistent understanding government-wide of expectations for monitoring compliance with the E-Verify clause, agencies are at risk of not monitoring contractor E-Verify compliance and failing to take action to resolve potential contractor noncompliance.

USCIS Has Communicated Limited Information to Agencies for Monitoring Contractor E-Verify Compliance

We found that some selected agencies relied on quarterly USCIS reports to help ensure federal contractor compliance with the E-Verify clause. Beginning in fiscal year 2020, USCIS produced these reports to share E-Verify program data with senior procurement executives government-wide and help agencies ensure contractor compliance. Among the contracting officials who reported taking steps to monitor contractor compliance, five of six officials said they used the reports when doing so. DHS and HHS

³⁷FAR 1.602-2.

³⁸[GAO-14-704G](#).

acquisition policy officials also stated that contracting officials throughout their departments generally relied on the USCIS reports when monitoring contractor compliance with E-Verify.

While these reports were useful to some contracting officials, USCIS officials told us they stopped issuing the reports after March 2022 because they identified quality issues with the data underlying the reports. These issues included mismatches between employer names in various databases used to generate the reports and employers having duplicate E-Verify accounts.

According to USCIS officials, one reason E-Verify accounts were hard to match to other federal procurement data was due to changes in the unique identifier used to identify federal contractors and other entities with which the government does business. Prior to April 2022, the federal government used the Data Universal Numbering System for this purpose, which was a proprietary system managed by a federal contractor. In April 2022, federal agencies transitioned to using a new identifier called the Unique Entity Identifier, which is assigned by the General Services Administration's System for Award Management. USCIS began requiring that federal contractors provide the new identifier when enrolling in E-Verify as of August 2022, according to program officials. USCIS has encouraged federal contractors with preexisting E-Verify accounts to update their accounts with the new identifier, but according to program officials, USCIS can not currently require them to do so. As a result, it is challenging for USCIS to match E-Verify data to other federal procurement data. USCIS officials told us that requiring all federal contractors to provide their new identifier would necessitate a public notice and comment process that they characterized as burdensome. They would prefer if the General Services Administration instead added an "E-Verify organization ID" field to its award management system to facilitate data matching. Officials from the General Services Administration told us they avoid including information that may not be applicable to all users.

In addition to the data quality issues USCIS identified, we also identified potential clarity issues with information contained in the reports. For example, the reports contained a column about contractors' "E-Verify usage compliance." The E-Verify clause generally requires that federal contractors use E-Verify to verify the employment eligibility of new employees and employees assigned to the contract within certain time frames. However, the usage compliance column in the report does not reflect whether contractors are using E-Verify as described in the FAR

clause. Instead, the column reflects whether a contractor verified at least one employee at any time after enrolling. USCIS officials told us that collecting information to gauge whether a contractor had complied with the FAR in using E-Verify would be burdensome, so the usage compliance column was intended to provide some information about contractors' use given the constraints of their data. However, we found that the column's name may be unclear or misleading to contracting officials.

USCIS officials initially told us they intended to improve some of the reports' known issues and restart the reports in the first quarter of fiscal year 2023. However, in March 2023, USCIS officials told us they intended to wait for the results of our review to determine how, if at all, to modify the reports and issue them going forward. They also said they have limited insight into how the federal contracting community used the reports, among other USCIS resources related to contractors' use of E-Verify, and anticipated our review would provide clarity in that regard.

According to *Standards for Internal Control in the Federal Government*, an agency should use quality information to achieve its objectives, in particular by obtaining relevant data in a timely manner based on identified information requirements.³⁹ According to a USCIS document summarizing the missions of the division that houses the E-Verify program, improving federal contractor compliance with the E-Verify clause is one of the division's key initiatives. USCIS officials told us that it is a key initiative because federal contractors may need special assistance and instruction to ensure they understand and comply with their E-Verify responsibilities. They stated that the E-Verify reports had been part of that initiative before they stopped issuing them, along with presentations to federal contractors and contracting officials, and information shared on USCIS's public website. Without USCIS taking action to ensure it collects quality information regarding contractors' use of E-Verify, agencies' insight into the extent to which federal contractors are in compliance with requirements to enroll in and use E-Verify will be limited.

In addition to problems with the quality of data, contracting officials we interviewed at selected agencies also identified challenges related to USCIS's communication related to monitoring contractor compliance with E-Verify. Thirteen of the 24 contracting officials we spoke with said they

³⁹[GAO-14-704G](#).

did not have the information they would need to monitor contractors' compliance with the E-Verify clause, such as what steps they should take or where that information could be found. HHS officials told us that contracting officers find it challenging that the E-Verify website does not prominently share information directed to agency officials.

In the absence of the report, USCIS has not communicated to federal agencies what steps they could take to monitor contractor compliance with the E-Verify clause. USCIS officials told us that agency contracting officials should take independent steps to monitor contractor compliance with the E-Verify clause. For example, they said that agency contracting officials should request information directly from contractors. They also stated that agency contracting officials could request information from USCIS, though with the caveat that the quantity of requests could be burdensome for E-Verify staff. However, as of May 2023, USCIS officials told us they had not communicated these expectations to the federal contracting community. The most recent E-Verify job aid, dated March 2022, still states that agency contracting officials should use USCIS's reports. After we raised this issue with USCIS, in May 2023, USCIS posted information online that informed agencies it had ceased issuing the report. However, the information did not include guidance for what steps agencies could take to monitor contractor compliance with E-Verify going forward.

USCIS has not developed a plan to communicate quality information to agencies for the purpose of monitoring contractors' enrollment in and use of E-Verify. According to *Standards for Internal Control in the Federal Government*, an agency should communicate quality information to external parties to help achieve its objectives.⁴⁰ OMB staff told us that DHS—the agency responsible for administering E-Verify—should provide the tools and resources necessary for agencies to monitor contractor compliance with the E-Verify clause. Without USCIS taking action to ensure it communicates quality information to agencies, agency contracting officials will face challenges ensuring federal contractors' compliance with the E-Verify clause.

⁴⁰[GAO-14-704G](#).

USCIS Terminated Federal Contractor Accounts without a Process to Refer Them to Suspension and Debarment Officials

USCIS has terminated federal contractor E-Verify accounts for misuse—violations of the E-Verify MOU—but recently paused terminating accounts for non-use.⁴¹ Although USCIS has terminated such accounts for misuse and adds termination information to its public website, it does not have a process to refer federal contractors whose E-Verify accounts it has terminated to agency suspension and debarment officials.

USCIS Terminates Federal Contractor Accounts for Misuse, But Paused Non-use Terminations

As of March 2023, USCIS officials told us that, since fiscal year 2021, they had terminated around 300 federal contractor accounts for misuse without reinstatement.⁴² USCIS defines misuse as any violation of the terms of the E-Verify MOU or not cooperating with USCIS. According to USCIS, each termination for misuse occurred when the contractor refused to close or refer cases of unresolved tentative nonconfirmations—discrepancies between employee-submitted information and DHS or Social Security Administration data that prevent the confirmation of an employee’s work eligibility.

USCIS officials stated that an unresolved tentative nonconfirmation could be the result of errors, or could indicate discrimination against employees. An example of an error might be an employer neglecting to close a tentative nonconfirmation after an employee decides not to take action to resolve it. An example of potential discrimination might be an employer not providing certain employees with the option to take action to resolve a tentative nonconfirmation, as required under E-Verify. For each termination for misuse, USCIS officials stated that they emailed or called the employer multiple times to notify it of its noncompliance, and provided each employer with a 30-day termination notice. USCIS will reinstate an employer’s account if the employer provides a written request. Employers then have 30 days to rectify the issue that resulted in the termination for misuse, such as by closing a tentative nonconfirmation.

⁴¹As mentioned earlier in the report, employers self-identify as federal contractors within the E-Verify system.

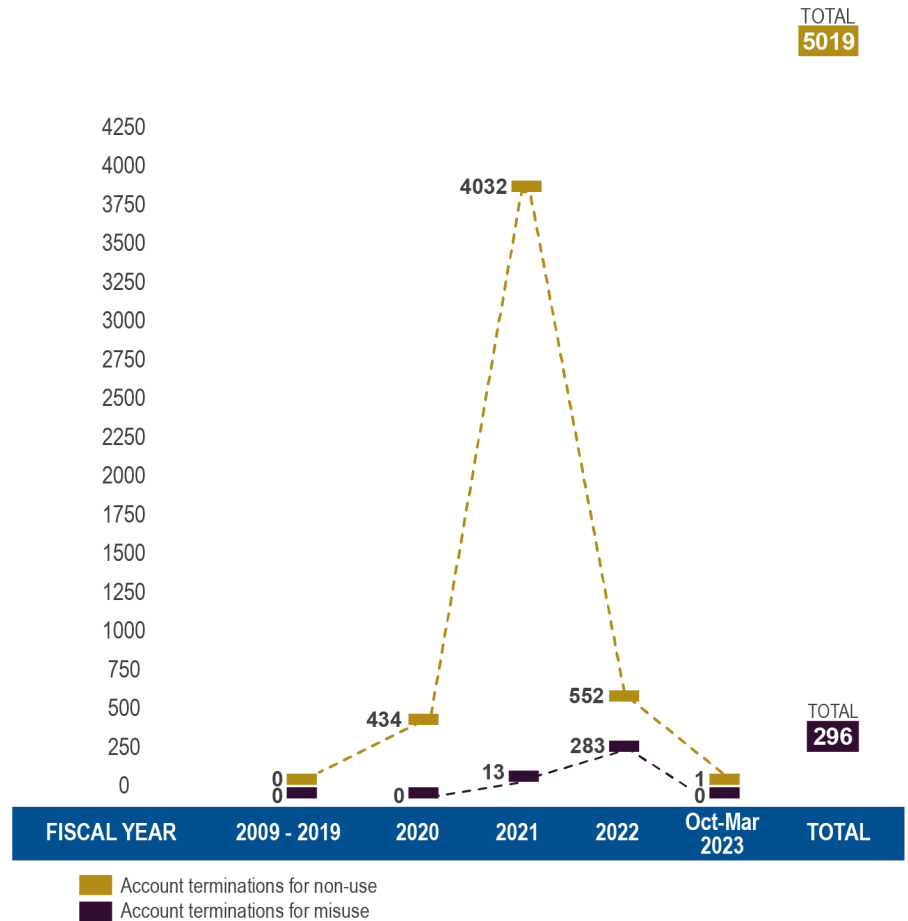
⁴²According to USCIS, its termination data include accounts that it terminated and has not reinstated. Once USCIS reinstates an employer’s account, that account no longer appears in the termination data. USCIS officials said that they are working on a way to track historical termination data and hope to implement it before the end of fiscal year 2023.

Prior to fiscal year 2023, USCIS also terminated federal contractor accounts for non-use. USCIS defines non-use as any employer that fails to verify any employees or update its account over a 3-year period. From fiscal year 2020 through March 2023, USCIS identified terminating more than 5,000 federal contractor accounts for non-use. USCIS officials told us that they reinstated an employer's account if the employer took steps to rectify the issue, such as logging into the E-Verify system.

Beginning in fiscal year 2023, USCIS paused terminating federal contractors' E-Verify accounts for non-use. USCIS officials stated that they exempted federal contractors from non-use terminations in November 2022 because there may be legitimate reasons why a self-identified federal contractor did not use the E-Verify system within a 3-year period. Specifically, federal contractors are required to use E-Verify when they have an active federal contract with the E-Verify clause, but are not required to use E-Verify when they do not have an active contract with the clause. If a company has not held a federal contract with the E-Verify clause for 3 years, it would not be required by federal regulation to use E-Verify. By not terminating those accounts for non-use, USCIS officials said that those federal contractors would be able to verify employees in the future if they were awarded a new federal contract with the E-Verify clause.

USCIS told us that from fiscal years 2009 through 2019, they did not terminate accounts—including those of federal contractors—for misuse or non-use because USCIS chose not to enforce the termination option in the E-Verify MOU for these accounts (see fig. 4).

Figure 4: Federal Contractor E-Verify Accounts Terminated for Misuse and Non-use as of March 31, 2023



Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) termination data. | GAO-24-106219

Note: According to U.S. Citizenship and Immigration Services (USCIS), its termination data represent federal contractor accounts that USCIS terminated and did not reinstate as of March 31, 2023. Once USCIS reinstates an employer’s account, that account no longer appears in the termination data.

USCIS officials stated that they began to terminate accounts for misuse and non-use in fiscal years 2020 and 2021 due to USCIS leadership’s policy goals. The first goal was to clean up the number of inactive accounts starting in fiscal year 2020 to reduce account maintenance and USCIS’s administrative compliance activities, such as calling or emailing

employers.⁴³ The second goal, which began in May 2021, was to reduce the number of accounts with unresolved tentative nonconfirmations. USCIS officials stated that they have not terminated as many federal contractor accounts for misuse from October 2022 to March 2023, because they have already addressed most accounts with unresolved tentative nonconfirmations. They added that they continue to take administrative compliance actions such as calling or emailing federal contractors when issues arise. Although they are no longer terminating federal contractor accounts for non-use, as previously noted, they said they consider terminating accounts for misuse as necessary.

USCIS Does Not Have a Referral Process for Terminated Federal Contractor Accounts

USCIS does not have a process to refer federal contractors whose E-Verify accounts it has terminated to federal agencies' suspension and debarment officials. The FAR requires that when DHS terminates a federal contractor's E-Verify MOU, and therefore denies the contractor access to the E-Verify system, it must refer the contractor to a suspension or debarment official for a possible suspension or debarment action.⁴⁴ DHS officials from the Office of the General Counsel stated that USCIS is responsible for implementing this referral process since it is the component responsible for terminating E-Verify MOUs. Instead of a referral, however, USCIS officials told us that as of March 2020, they started providing account termination information about employers, including federal contractors, within a searchable database that is accessible from the E-Verify website entitled "How to Find Participating Employers" (see fig. 5).

⁴³USCIS officials stated that some of these employers may have ceased operations or merged and created other E-Verify accounts.

⁴⁴FAR 22.1802(e). While the FAR directs this requirement to DHS, USCIS is the DHS component that administers the E-Verify program, makes determinations of whether to terminate MOUs, and carries out those terminations.

Figure 5: USCIS E-Verify Website Screenshot of How to Find Participating Employers, Taken May 25, 2023



How To Find Participating Employers

Use the E-Verify search tool to find employers who are currently enrolled in E-Verify. Your search will display the following information:

- **Employer name** – The name the employer used when they enrolled in E-Verify. This can be the business' legal name, a trade name, or an abbreviation.
- **Doing Business As (DBA) name** – The name an employer uses publicly. The public may see the DBA, but the employer may have used another name when they enrolled in E-Verify.
- **Account Status** – Indicates whether the account is currently enrolled or terminated.
- **Enrollment date** – The date the E-Verify Memorandum of Understanding is signed.
- **Termination Date** – The E-Verify Memorandum of Understanding termination date.
- **Workforce size** – Appears as long as the employer reported they have at least five employees.
- **Number of hiring sites** – The locations where employers hire employees and where they complete Form I-9.
- **Hiring site locations (by state)** – The geographic location(s) of hiring sites, by state, reported by the employer.

Parameters:

- USCIS updates the search tool data every quarter. However, employer status may be updated as needed.
- Employers report their own data at the time they enroll in E-Verify. The accuracy and completeness of the data depend on what was submitted by employers at the time of enrollment and as reported throughout the employer's relationship with E-Verify.
- [Review Employer Data Parameters](#)

Search

Business Name

Primary Industry Type

Hiring Site Locations (by state)

Account Status

Items per page

Employer	Doing Business As	Account Status	Date Enrolled	Date Terminated	Workforce Size	Number of Hiring Sites	Hiring Site Locations (by state)
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Source: U.S. Citizenship and Immigration Services (USCIS) website. | GAO-24-106219

This page of the website functions as a database of employers participating in E-Verify and provides, among other things, the following information:

- **Employer name.** The name the employer used when it enrolled in E-Verify. This can be the business's legal name, a trade name, or an abbreviation.
- **Account status.** Indicates whether the account is currently enrolled or terminated.
- **Enrollment date.** The date that the employer signed the E-Verify MOU.
- **Termination date.** The E-Verify MOU termination date.

The information on USCIS's employer participation website does not include certain items of information identified in DHS's guidance for suspension and debarment referrals. DHS's *Suspension and Debarment Instruction* defines a referral as a written request for action supported by documentary evidence, and presented to the suspension and debarment official.⁴⁵ However, the website does not provide:

- documentary evidence outlining the circumstances of the termination; and
- a request for action for terminated federal contractors.

According to DHS officials from the Office of the General Counsel and the Office of the Chief Procurement Officer, USCIS's inclusion of account termination information in its E-Verify employer participation website does not constitute a referral to a suspension or debarment official under FAR 22.1802(e). For example, a DHS official stated that the fact that USCIS terminated a contractor's account would not itself be a referral without supporting documentation outlining the circumstances of the termination.

Additionally, based on our interviews with DHS, DOD, and HHS suspension and debarment officials, the information on the E-Verify website does not meet suspension and debarment officials' expectations for referrals. All of the DHS, DOD, and HHS suspension and debarment officials (five of five) we interviewed said that they do not consider the information on USCIS's website to constitute a referral.

⁴⁵Department of Homeland Security, *Suspension and Debarment Instruction*, 146-01-00, Revision Number 01 (Apr. 10, 2018).

USCIS officials told us that posting termination information on the E-Verify website would meet the FAR's referral requirement. DHS officials told us, however, that USCIS has not met the FAR's referral requirement due to a misunderstanding of the suspension and debarment process. After we alerted DHS to this issue, DHS officials told us in July 2023 that USCIS plans to take several steps to comply with the FAR referral requirement, including (1) developing a process to make referrals to suspension and debarment officials; and (2) assessing whether there may be a need to increase staffing at USCIS's Office of Contracting to support this process. They also said they planned to update termination notices to inform federal contractors that their termination may result in a suspension or debarment referral, which officials hope would improve compliance. As of July 2023, officials stated that they were early in the process for these plans and could not yet provide documentation or a time frame for when they may be complete.

USCIS has terminated thousands of federal contractors' accounts since fiscal year 2020, including hundreds for misuse, without a referral process consistent with DHS standards. Until USCIS documents and implements a referral process, agency suspension and debarment officials will not be able to determine whether federal contractors' misuse of E-Verify merits suspension or debarment.

Conclusions

Including the E-Verify clause in applicable contracts, as required by the FAR, helps ensure that federal contracts performed in the U.S. will be staffed by individuals who are authorized to work in the U.S. While DOD, DHS, and HHS generally included the clause in the contracts we selected, these agencies did not always accurately report in the federal procurement data system that the contracts contained the clause. Without ensuring contracting officials know when and how to accurately indicate in federal procurement data the clause's inclusion in an applicable contract, users of the federal procurement data system—including federal agencies and Congress—do not have accurate information regarding the use of the E-Verify clause. Moreover, our review of government-wide federal procurement data suggests that many contracts that appear to be subject to the FAR's requirement for the inclusion of the clause may not include it. Similar to the findings from our sample, it is possible that the clause was included in these contracts but not accurately reported in federal procurement data. Taking additional steps to ensure the accuracy of federal procurement data—such as incorporating the relevant federal procurement data field in government-wide annual verification and validation reports overseen by OMB—would help ensure the information in the federal procurement data system accurately reflects the presence

of the E-Verify clause in applicable contracts on a government-wide basis.

Due in part to differing understandings of their responsibilities, the selected agencies in our review varied in their efforts to monitor contractor enrollment in and use of E-Verify. Without a consistent understanding of government-wide expectations for doing so, agencies are at risk of not monitoring contractors and failing to take action to resolve potential contractor noncompliance. Further, most contracting officials we interviewed who were monitoring contractor compliance relied on quarterly USCIS reports for this purpose. However, USCIS stopped issuing these reports in early 2022 due to data quality challenges. Until USCIS collects and communicates the necessary quality data to agencies, it cannot ensure that federal agencies have reliable information to overcome the challenges they have encountered monitoring compliance with the E-Verify clause.

While USCIS is developing a process for referring a federal contractor to a suspension and debarment official following termination of the contractor's E-Verify MOU, as required by the FAR, it has not yet established a time frame for doing so or documentation outlining its plans. As a result, USCIS is not currently meeting this requirement. In turn, suspension and debarment officials are unable to perform their duties in determining whether or not the reasons for terminating an account merit suspension or debarment. By collecting quality information, improving communications, and developing a clear referral process, DHS and USCIS could better support agencies' efforts to monitor E-Verify compliance.

Recommendations for Executive Action

We are making a total of eight recommendations, including one to DOD, two to DHS, one to HHS, two to OMB, and two to USCIS. Specifically:

The Secretary of Defense should ensure that DOD's Principal Director of Defense Pricing and Contracting takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders. (Recommendation 1)

The Secretary of Homeland Security should ensure that DHS's Chief Procurement Officer takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders. (Recommendation 2)

The Secretary of Health and Human Services should ensure that HHS's Deputy Assistant Secretary for Acquisitions takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders. (Recommendation 3)

The Director of OMB should ensure that Office of Federal Procurement Policy's Administrator takes steps to identify the extent to which there are government-wide issues with the accuracy of FPDS's Additional Reporting field, and takes appropriate management measures as necessary, such as including the field in the annual verification and validation process as it pertains to E-Verify. (Recommendation 4)

The Director of OMB should ensure that Office of Federal Procurement Policy's Administrator issues guidance for agencies clarifying its expectations that they should monitor contractor enrollment in and use of E-Verify with resources provided by USCIS. (Recommendation 5)

The Director of USCIS should identify and implement an approach to collect quality information on federal contractors enrolled in E-Verify for the purpose of helping agencies monitor contractor compliance, such as by collecting Unique Entity Identifiers from federal contractors with existing E-Verify accounts. (Recommendation 6)

After implementing an approach to collect quality information, the Director of USCIS should develop and implement an approach to communicate quality information to agencies for the purpose of monitoring contractor compliance with E-Verify. (Recommendation 7)


The Secretary of Homeland Security should ensure that USCIS's Director takes steps to document and implement a process for referring federal contractors to a suspension or debarment official if USCIS terminates their E-Verify MOU. (Recommendation 8)

Agency Comments and Our Evaluation

We provided a draft of this report to DOD, DHS, HHS, the General Services Administration, and OMB for review and comment. DOD, DHS, and HHS provided written comments, which are reproduced in appendixes II, III, and IV, and OMB responded via email. DOD, DHS, and HHS concurred with the recommendations made to each of their agencies and identified steps they plan to take to address the recommendations. OMB concurred with the two recommendations directed to it. DHS, HHS, and OMB also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, the Administrator of the General Services Administration, and the Director of OMB. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov or Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Timothy J. DiNapoli
Managing Director, Contracting and National Security Acquisitions



Rebecca Gambler
Director, Homeland Security and Justice

Appendix I: Objectives, Scope, and Methodology

This report addresses the extent to which (1) selected federal agencies ensured the E-Verify clause was included in selected contracts and reported in the Federal Procurement Data System (FPDS); (2) selected federal agencies monitored whether federal contractors comply with the E-Verify clause; and (3) U.S. Citizenship and Immigration Services' (USCIS) has taken administrative actions against federal contractors that did not comply with E-Verify program requirements.

To address our first objective, we selected the Departments of Defense (DOD), Homeland Security (DHS), and Health and Human Services (HHS). We selected these three because according to FPDS data, they were among the agencies with the highest number of contracts, orders, and associated obligations from fiscal years 2019 to 2021 that appeared to be subject to the Federal Acquisition Regulation's (FAR) requirement for inclusion of the E-Verify clause.¹ We selected fiscal years 2019 to 2021 because we wanted multiple years of data to ensure we had an accurate understanding of how agencies' E-Verify-eligible awards and associated obligations changed over time and these 3 years were the most recent fiscal years for which data were available at the time of our review. The three agencies accounted for nearly two-thirds of all awards in fiscal years 2019 to 2021 that appeared to be subject to the FAR's E-Verify requirement.

The FAR's E-Verify criteria generally require federal contracting officers to include the E-Verify clause in federal contracts that exceed \$150,000 unless the contract: (1) has a period of performance of less than 120 days; (2) is only for work performed outside the U.S.; or (3) is only for commercially available off-the-shelf (COTS) items or commercial services that are part of the purchase of a COTS item.² We initially contemplated including federal grants in our analysis, so we cross-referenced the agencies' contract data in FPDS against grants data in USASpending.gov to prioritize agencies that also had higher numbers of grants. After reviewing the FAR and interviewing DOD, DHS, and HHS officials, we

¹Executive departments and agencies are responsible for collecting and reporting data to FPDS as required by the FAR. See FAR subpart 4.6. FPDS collects and disseminates procurement data to Congress, agencies, and the private sector. The government uses the reported data to measure and assess the impact of federal procurement on the nation's economy, the extent to which awards are made to businesses in the various socioeconomic categories, the impact of full and open competition on the acquisition process, and other procurement policy purposes. Unless otherwise specified, we collectively refer to contracts and orders as contracts in this appendix.

²FAR 22.1803.

determined that the FAR's E-Verify clause requirement does not apply to grants. Grants are administered under separate regulations than the FAR, principally, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.³ Therefore, we ultimately decided to exclude grants and subgrants from our review.

We applied the same selection methodology to select two components from each of the three agencies for a total of six components. Selected components included the Defense Logistics Agency (DLA) and the Navy for DOD, the Federal Emergency Management Agency and the U.S. Coast Guard for DHS, and the Centers for Disease Control and Prevention and the National Institutes of Health for HHS. According to FPDS, these components are among those with the highest number of contract awards and associated obligations from fiscal years 2019 to 2021 that appeared to be subject to the FAR's requirement for inclusion of the E-Verify clause. Within each component, we randomly selected 4 fiscal year 2021 contracts that met E-Verify criteria for a nongeneralizable sample of 24 contracts. The results of our analysis are not generalizable, but they provided insight into challenges selected agencies were faced with, such as including the E-Verify clause in applicable contracts and reporting use of the E-Verify clause in FPDS. We selected contracts awarded in fiscal year 2021 as it was the most recent year for which we had full data available when we began our review.

To select the contracts from each component, we randomly selected two contracts in which FPDS data indicated the E-Verify clause was included and two in which the data indicated the clause was not present. For each selected contract or order, we analyzed contract documentation to determine whether it included the E-Verify clause, and federal procurement data to identify whether agency contracting officials marked the E-Verify response in FPDS's Additional Reporting field. We also randomly selected six subcontracts from our sample of prime contracts—one from each component—and analyzed subcontract documentation to determine if the prime contractor included the E-Verify clause in these subcontracts.

We took several steps to assess the reliability of the federal procurement data. These steps included successfully tracing information in the 24 selected prime contracts back to multiple data elements in each contract's or order's record in FPDS, performing electronic testing for obvious errors

³2 C.F.R. part 200.

in accuracy and completeness, and analyzing agencies' FPDS data certifications. We determined the data were sufficiently reliable for the purposes of determining whether each selected contract and subcontract met the FAR's criteria for inclusion of the E-Verify clause. The data were not reliable for determining whether the E-Verify clause was included in the contract, but we corrected for these reliability issues by reviewing the 24 selected contracts and interviewing DOD, DHS, and HHS contracting officials.

We excluded some contract categories from our nongeneralizable sample. For example, we excluded contracts for commercial products because the FAR's requirement for use of the E-Verify clause generally excludes contracts that are only for COTS items and contracts for commercial services that are part of the purchase of a COTS item. We excluded orders placed under basic ordering agreements because they accounted for a small number of orders in fiscal year 2021.⁴ We also excluded orders under government-wide acquisition contracts and federal supply schedule contracts—both of which are specific types of contracts that can be used by agencies government-wide—because that analysis would have required contract documents from non-DOD, DHS, and HHS agencies. For five of our initial selections, we randomly selected a contract or order that met our criteria for exclusion from the sample, such as a contract for COTS items. For those five selections, we excluded the contract or order and moved to the next contract or order on the randomized list.

We also analyzed FPDS data to estimate the percentage of contracts awarded in fiscal year 2021 that appeared to be subject to the E-Verify requirement but for which contracting officials had not recorded the presence of the clause in FPDS, both government-wide and for the six selected components. We identified contracts that appeared to be subject to the E-Verify requirement using the same criteria described above. However, unlike our sample selection criteria described above, we excluded contracts that used simplified acquisition procedures because FPDS data do not indicate if these contracts are for commercial products. We then reviewed how many of these contracts did and did not have the Additional Reporting Field—Employment Eligibility Verification (52.222-54) option selected in FPDS. Some contracts we excluded may require the E-Verify clause, such as contracts using simplified acquisition

⁴Basic ordering agreements are written instruments negotiated between agencies and contractors that describe, among other things, the methods for determining pricing, issuing, and delivering future orders under the agreements.

procedures. Some of the contracts included in our analysis may not require the E-Verify clause, such as contracts for the purchase of commercial services that are part of the purchase of a COTS item.

We also identified and assessed the FAR's E-Verify requirements and department-wide and selected components' acquisition regulations, policies, and training documentation for ensuring the E-Verify clause is included, as appropriate, in selected contracts, orders, and subcontracts. We analyzed the FPDS Data Element Dictionary; DHS's E-Verify job aid; and the Defense Federal Acquisition Regulation Supplement's Procedures, Guidance, and Information to identify guidance for agency reporting on the use of the E-Verify clause in FPDS's Additional Reporting field. Based on these guidance documents and our analysis of the 24 selected contract files, we determined that contracting officials should have marked the E-Verify response in FPDS for each selected contract. We also compared department-wide and government-wide acquisition policies related to ensuring the accuracy of FPDS data against federal internal control standards. We determined that the information and communication component of *Standards for Internal Control in the Federal Government*, specifically the underlying principle that management should externally communicate the necessary quality information to achieve their objectives, was significant to this objective.⁵ We analyzed the Digital Accountability and Transparency Act of 2014, the FAR, and related guidance to identify government-wide requirements that agency procurement data should be accurate and complete.⁶

We interviewed DOD, DHS, and HHS acquisition policy and contracting officials across 30 offices about possible reasons the E-Verify clause was not included in a particular contract or order, despite the contract apparently meeting the FAR's E-Verify criteria, or why inclusion of the E-Verify clause was not accurately reported in FPDS's Additional Reporting field, if applicable. These officials also confirmed our assessment about whether each selected contract or order included the E-Verify clause and if each selected contract's or order's record in FPDS accurately reflected inclusion of the E-Verify clause in the Additional Reporting field. We interviewed General Services Administration officials responsible for administering FPDS to understand the addition of the E-Verify response to the Additional Reporting field and the extent to which the value in the

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

⁶See Pub. L. No. 113-101 (2014) (codified as amended at 31 U.S.C. 6101); FAR 4.604(c).

Additional Reporting field propagates from an indefinite delivery contract to an order. We also interviewed representatives of six prime contractors to confirm whether they included the E-Verify clause in selected subcontracts and to determine their processes for including the E-Verify clause in applicable subcontracts.

To address our second objective, we analyzed USCIS data to assess the extent to which contractors in our sample enrolled in and used E-Verify. These data included information on the contractors' dates of enrollment, enrollment status at the time of our review (i.e., whether their accounts were active or terminated), and information on whether contractors had used E-Verify to verify employees. We assessed the reliability of these data by comparing them with the selected contracts and FPDS records. We also interviewed USCIS officials to understand the known limitations of the data and their reporting on contractor enrollment and use of E-Verify. We determined that the data were sufficiently reliable for the purposes of describing contractor enrollment in E-Verify. However, we determined the data were not reliable for assessing whether contractors verified employees as described under the E-Verify clause. We determined the data were not reliable because, while they included information on whether contractors had verified any employees, they did not include information on whether the contractors verified employees in accordance with the E-Verify clause. For example, the data could demonstrate that a contractor verified one employee without including information about whether those employees were assigned to a federal contract, or whether the contractor should have verified additional employees to comply with the E-Verify clause. As a result, we did not include data in our report on whether contractors verified employees in accordance with the FAR's E-Verify requirements.

We analyzed tools, resources, and reports that USCIS created to communicate E-Verify program data and help agencies monitor contractor compliance with E-Verify. We compared USCIS efforts against federal internal control standards. We determined that the information and communication component of *Standards for Internal Control in the Federal Government*, specifically the underlying principles that management should obtain and externally communicate the necessary quality information to achieve their objectives, were significant to this objective.⁷

⁷[GAO-14-704G](#).

In addition, we analyzed contract performance assessment reports for the contracts in our sample to determine the extent to which contracting staff reported that they took actions for contractor noncompliance with the E-Verify clause. We interviewed DOD, DHS, and HHS acquisition policy and contracting officials about their policies and procedures for ensuring contractor compliance with E-Verify. We spoke with officials to understand both their general policies for ensuring contractor compliance, and the extent to which contracting staff took steps to monitor contractor compliance for the contracts in our sample. We also interviewed DOD, DHS, and HHS suspension and debarment officials across five offices about whether they had received referrals for contractor noncompliance with E-Verify, and any actions taken in response. We interviewed USCIS officials about their oversight of E-Verify and any coordination with federal contracting officials to monitor contractor compliance. We interviewed OMB staff about their expectations for the federal contracting community regarding ensuring contractor compliance with E-Verify. We interviewed representatives of six prime contractors regarding any steps agencies had taken to ensure their compliance with E-Verify. We compared agency efforts against federal internal control standards. We determined that the design of control activities component of *Standards for Internal Control in the Federal Government*, specifically that management should consider the consistency of performance, were significant to this objective.

To address our third objective, we collected and reviewed key policy and guidance documentation related to administrative compliance actions. These documents included the 2013 E-Verify Memorandum of Understanding for Employers, 2022 USCIS's *Termination & Reinstatement Policy & Procedures*, 2022 USCIS's *Behavior Descriptions*, as well as other relevant guidance documents to identify how USCIS takes action for noncompliance.

We analyzed USCIS federal contractor E-Verify account termination data for fiscal years 2009 through 2023 to assess the extent to which USCIS had terminated federal contractor accounts. We selected fiscal year 2009 as the starting point for collecting this data since this is the year the FAR was amended to require federal contractors to enroll in and use E-Verify under certain contracts (the exceptions are discussed in this report). These data included information on the number of contractor accounts terminated by fiscal year and the reason for termination. To assess the reliability of the data, we interviewed USCIS data analysts and reviewed existing information about the data collection program. We determined that the data were sufficiently reliable for the purposes of describing the

number and type of USCIS's account terminations. We compared USCIS's termination actions with its termination policies.

We also reviewed FAR 22.1802(e) and assessed DHS's policies for ensuring that it refers federal contractors whose memorandums of understanding (MOU) it has terminated to suspension and debarment officials. We reviewed USCIS's E-Verify website and compared that information with DHS's guidance for making suspension and debarment referrals in *Suspension and Debarment Instruction* 146-01-00.⁸

We interviewed USCIS officials about steps they take to address contractor noncompliance with the E-Verify MOU, including account termination and referral for suspension or debarment. We also interviewed officials within DHS's Office of the General Counsel and Office of the Chief Procurement Officer, as well as DOD, DHS, and HHS suspension and debarment officials, about USCIS's process for notifying suspension and debarment officials about terminations of federal contractor E-Verify MOUs.

We conducted this performance audit from August 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁸Department of Homeland Security, *Suspension and Debarment Instruction*, Instruction Number 146-01-00, Revision Number 01 (Apr. 10, 2018).

Appendix II: Comments from the Department of Defense



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

Ms. Marie A. Mak
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Ms. Mak,

This is the Department of Defense (DoD) response to the GAO Draft Report GAO-23-106219, "FEDERAL CONTRACTING: Agencies Can Better Monitor E-Verify Compliance," dated August 16, 2023 (GAO Code 106219).

Enclosed is DoD's response to the subject report. My point of contact is Mr. Larry McLaury who can be reached at 571-309-0940 or via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

Sincerely,

TENAGLIA Digitally signed by
.JOHN.M.1 TENAGLIA,JOHN.
154945926 M.1154945926
Date: 2023.09.07
17:06:21 -04'00'

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Enclosure:
As stated

Enclosure

GAO DRAFT REPORT DATED AUGUST 16, 2023
GAO-23-106219 (GAO CODE 106219)

**“FEDERAL CONTRACTING: AGENCIES CAN BETTER MONITOR
E-VERIFY COMPLIANCE”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: The Secretary of Defense should ensure that DoD’s Principal Director of Defense Pricing and Contracting (DPC) takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders.

DoD RESPONSE: Concur. DPC will publish a policy memorandum directing the acquisition workforce to review the Federal Acquisition Regulation (FAR) 22.18, “Employment Eligibility Verification,” and to insert FAR Clause 52.222-54, “Employment Eligibility Verification” in all required contracts. Additionally, the memorandum will cite Defense FAR Supplement, Procedures, Guidance, and Information 204.606(x)(C)(3), “Reporting Information: FPDS Entry – Legislative Mandates Section,” to remind the acquisition workforce to identify in FPDS if FAR Clause 52.222-54, “Employment Eligibility Verification,” or FAR clause 52.212-5, “Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial” are included in the contract.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 18, 2023

Timothy J. DiNapoli
Managing Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548-0001

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-23-106219, "FEDERAL CONTRACTING: Agencies Can Better Monitor E-Verify Compliance"

Dear Mr. DiNapoli and Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's recognition of the critical role the U.S. Citizenship and Immigration Services (USCIS) plays in managing E-Verify as an electronic means for verifying employment eligibility of workers in the United States, which processes nearly 50 million cases annually and is one of the government's highest-rated services for user satisfaction.¹ Beginning in 2017, the Department also took several actions to drive contractor compliance with the requirements of Federal Acquisition Regulation (FAR) clause 52.222-54, "Employment Eligibility Verification," such as increasing communication to both contractors and subcontractors on the clause's requirements and providing several training webinars to the acquisition workforce. GAO also acknowledged recent USCIS efforts to improve program integrity by instituting Memorandum of Understanding (MOU) termination procedures for employers that do not properly use the E-Verify system.

¹ <https://www.e-verify.gov/about-e-verify>

**Appendix III: Comments from the Department
of Homeland Security**

DHS remains committed to ensuring Federal contractor compliance with FAR E-Verify requirements. To that end, the E-Verify web pages², “Supplemental Guide For Federal Contractors,”³ and presentation materials for federal contractors were updated in June 2023 to reflect amended FAR clause threshold requirements. The existing “E-Verify Notice of Intent to Terminate” and “Final Termination” notice templates were also updated in August 2023 to emphasize the suspension and debarment referral process for contractors should their MOU be terminated. DHS will continue to ensure that the requisite clause is included in applicable contracts and accurately reported in the Federal Procurement Data System (FPDS).

The draft report contained eight recommendations, including four for DHS with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, sensitivity, and editorial issues under a separate cover for GAO’s consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER  Digitally signed by JIM H
CRUMPACKER
Date: 2023.09.18 09:17:55 -04'00'

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Enclosure

² <https://www.e-verify.gov/employers/federal-contractors/who-is-affected-by-the-e-verify-federal-contractor-rule>
and <https://www.e-verify.gov/employers/federal-contractors/federal-contractors-gas>

³ <https://www.e-verify.gov/supplemental-guide-for-federal-contractors>

**Enclosure: Management Response to Recommendations
Contained in GAO-23-106219**

GAO recommended that the Secretary of Homeland Security:

Recommendation 2: Ensure that DHS’s Chief Procurement Officer takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders.

Response: Concur. The DHS Office of the Chief Procurement Officer (OCPO) has several processes in place to assist contracting officers to correctly insert FAR clause 52.222-54 in solicitations and contracts, and properly report in FPDS. These include:

- The “Job Aid on Employment Eligibility Verification (E-Verify),” dated March 2022, that provides agency contracting officials with guidance on properly reporting employment eligibility verification requirements in contracts and orders.
- A slide deck, “Additional Reporting - Employment Eligibility Verification (E-Verify),”⁴ on reporting employment eligibility verification that is used to reinforce accurate reporting in FPDS and which is posted on Acquisition.gov under “Data Initiatives” for use by all Federal agencies. DHS Components are also provided this same information by OCPO during annual training on FPDS and other government-wide systems.
- Internal automated edit checks to FPDS reporting on each DHS contract action that searches specific data elements reported on DHS contract actions, and then prompts contracting officials if these data elements indicate that a contract action should, or should not, include the employment eligibility verification identifier in FPDS on each contract action. If there is a mismatch with the report criteria, the contracting official receives an email notification requesting that they check what was reported in FPDS to ensure the data is correct.

To supplement these actions, OCPO will issue an Acquisition Alert to Heads of the Contracting Activities to reiterate the FAR requirements to insert the clause 52.222-54 in solicitations and contracts when required, and to properly code the contract actions in FPDS. Estimated Completion Date (ECD): January 31, 2024.

⁴https://view.officapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.acquisition.gov%2Fsites%2Fdefault%2Ffiles%2Fpage_file_uploads%2FE-Verify%2520final_pptx&wdOrigin=BROWSELINK

GAO recommended that the Director of USCIS:

Recommendation 6: Identify and implement an approach to collect quality information on federal contractors enrolled in E-Verify for the purpose of helping agencies monitor contractor compliance, such as by collecting Unique Entity Identifiers from federal contractors with existing E-Verify accounts.

Response: Concur. In August 2022, the USCIS E-Verify program started collecting Unique Entity Identifiers (UEI) for enrolled employers that identify as federal contractors with the FAR 52.222-54 clause, and updated behavior reports to identify such employers who do not have their UEI number recorded in E-Verify. However, this information collection is currently an optional field, as E-Verify does not have authorization to require E-Verify enrollees to provide this information. To require this field, the agency must provide public notice of its intent to collect the information and receive Office of Management and Budget (OMB) approval, as required by the Paperwork Reduction Act, 44 United States Code § 3501 *et seq.*

The E-Verify program expects to finalize changes to its information collection, including the UEI, by December 31, 2024. Once USCIS receives OMB approval and issues a notice requiring the collection of the UEI for E-Verify enrolled and self-identified federal contractors with the FAR 52.222-54 clause, the E-Verify program will communicate with these contractors to instruct them to update their profile. E-Verify compliance staff will also analyze behavior reports to follow up with the federal contractors who have not completed the required field. ECD: June 30, 2025.

Recommendation 7: Develop and implement an approach to communicate quality information to agencies for the purpose of monitoring contractor compliance with E-Verify.

Response: Concur. Once the E-Verify program has completed work to collect UEIs from enrolled federal contractors by June 2025 as previously noted, they will begin creating and posting reports with relevant information for agencies for the purpose of monitoring contractor compliance with the FAR 52.222-54 clause. Coordinating through the DHS OCPO and the OMB's Office of Federal Procurement Policy, the USCIS Office of Contracting (OCON) will request the names and contact information of Federal Contracting Agencies' procurement subject matter experts who monitor compliance with the FAR clause. The E-Verify program will then communicate with procurement subject matter experts when reports have been posted to a web-based portal available to federal procurement officials, or other appropriate system, and the E-Verify program, in consultation with OCON, will disseminate relevant information regarding how to monitor contractor E-Verify compliance. ECD: June 30, 2025.

GAO recommended that the Secretary of Homeland Security:

Recommendation 8: Ensure that USCIS’s Director takes steps to document and implement a process for referring federal contractors to a suspension or debarment official if USCIS terminates their E-Verify MOU.

Response: Concur. In August 2023, the E-Verify program updated its existing “Notice of Intent to Terminate” and “Final Termination” notice templates to include language notifying the employer of the suspension and debarment referral process for federal contractors with the FAR 52.222-54 clause should USCIS terminate their E-Verify MOU. In September 2023, the E-Verify program also drafted a standard operating procedure and referral template that refers self-identified federal contractors with the FAR 52.222-54 clause in one or more of their contracts whose MOU has been terminated to the USCIS Office of Contracting Suspension and Debarment Director (OCON SDD). The OCON SDD will analyze the E-Verify referral and supporting documentation, confirm the employer is a federal contractor, and will refer cases to the DHS Suspension and Debarment Official for action or use delegated authority to take appropriate action on these cases. Once this process is finalized by USCIS and DHS, all future E-Verify MOU terminations for federal contractors with the FAR 52.222-54 clause will follow this process. ECD: March 29, 2024.

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

September 19, 2023

Tim DiNapoli
Managing Director, Contracting and
National Security Acquisitions
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. DiNapoli and Ms. Gambler:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, **"FEDERAL CONTRACTING: Agencies Can Better Monitor E-Verify Compliance"** (GAO-23-106219).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Melanie Anne Egorin

Melanie Anne Egorin, PhD
Assistant Secretary for Legislation

Attachment

**Appendix IV: Comments from the Department
of Health and Human Services**

**GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT
REPORT ENTITLED - FEDERAL CONTRACTING: AGENCIES CAN BETTER
MONITOR E-VERIFY COMPLIANCE (GAO-23-106219)**

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity to review and provide comments on the Government Accountability Office's (GAO) draft report.

Recommendation

The Secretary of Health and Human Services should ensure that HHS's Deputy Assistant Secretary for Acquisitions takes steps to ensure that contracting staff correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders.

HHS Response

HHS concurs with the GAO recommendation.

The Office of Acquisition (OA) will issue guidance/and or conduct training to ensure that HHS Contracting Officers are correctly coding the Employment Eligibility Verification response in FPDS for applicable contracts and orders. Additionally, OA will review FPDS reporting and coordinate with OPDIVs and STAFFDIVs to verify that Contracting Officers correctly select the Employment Eligibility Verification response in FPDS for applicable contracts and orders. This supplemental review and verification will be conducted quarterly in fiscal year 2024.

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

Timothy J. DiNapoli, (202) 512-4841 or dinapolit@gao.gov
Rebecca Gambler, (202) 512-8777 or gablerr@gao.gov

Staff Acknowledgments

In addition to the contacts named above, the following staff members made key contributions to this report: Marie A. Mak (Director), Janet McKelvey (Assistant Director), Ashley Davis (Assistant Director), Jeff Hartnett (Analyst-in-Charge), Matthew T. Crosby, Michele Fejfar, Suellen Foth, Kelsey Griffiths, Tonya Humiston, Sasan J. “Jon” Najmi, William Reed, Edward J. SanFilippo, and Christopher D. Wolf.

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