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Immigration Update: More on the I-9 and E-Verify

By Nancy-Jo Merritt and Matthew J. Martinez

CHANGES IN THE I-9 FORM

As of June 16, USCIS has made several changes to the I-9 process. Five documents have been removed as acceptable documents for List A of Section Two:

- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (Form I-551; an earlier form of the "green card")
- Unexpired Re-Entry Permit (Form I-327; sometimes referred to as the "white passport," often used as a travel document by refugees)
- Unexpired Refugee Travel Document (Form I-571)

One document was added to List A:

- Unexpired Employment Authorization Document (Form I-766)

All employment authorization documents with photographs have been consolidated as one item on List A: I-688, I-688A, I-688B, I-766.

New instructions for Section One of the I-9 clarify that employees are not obligated to provide their Social Security number in Section One, unless the employer participates in E-verify.

Finally, you are reminded that employers may now sign and retain I-9 forms electronically, pursuant to instructions on Page 2 of the newest version of the I-9. USCIS will accept the "Rev. 6/5/07 edition of the I-9, but note that the newest edition is dated 6/16/08. The newest I-9 is identical to prior versions; only the instructions have changed.

PROPOSED E-VERIFY RULE FOR GOVERNMENT CONTRACTORS IS PUBLISHED

As we reported recently, in anticipation of this proposed rule, President Bush identified E-verify as the required electronic employment verification program to be required for all government contractors. An earlier presidential proclamation, published long before E-verify was available, indicated that at some point government contractors would be required to use an electronic employment verification system. Now we know that E-verify will be required.

The proposed rule [it is not yet a final rule] will amend the Federal Acquisition Regulation (FAR), to require that federal contracts contain clauses requiring federal contractors (and some subcontractors) utilize the E-verify system to verify the employment eligibility, not only of newly hired employees, but eventually of existing employees who are directly engaged in the performance of work under the covered contract.

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USCIS will now revise the E-verify Memorandum of Understanding (MOU), the program manual, and the training materials, website and other materials to reflect the requirements imposed on federal contractors. This will allow employers that are awarded a Federal contract to run existing employees through E-verify, something that is currently prohibited. Compliance with the new MOU will be a performance requirement under the terms of federal contracts.

The proposed rule can be found in Vol. 73 of the Federal Register, No. 114, June 12, 2008, pp. 3374-3381. Written comments may be submitted to FAR on or before August 11, 2008 in order to be considered in the formulation of the fundamental rule. The instructions for submitting comments are available in the proposed rule.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A. (1974) J.D. (1978) from Arizona State University.

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