



August 2009 Immigration Update

Napolitano at DHS Targets over 650 Employers; Supports Mandatory E-Verify for Federal Contractors. Other News: Congress Votes to Extend E-Verify; New 287(g) Partnership Approach; Premium Processing for I-140s Resumes

E-Verify News

Administration Throws Weight Behind E-Verify. Department of Homeland Security (DHS) Secretary Janet Napolitano announced on July 8 that she will support strengthened employment eligibility verification. She said that the Administration will issue a regulation that will award federal contracts only to employers who use E-Verify to check employee work authorization. The declaration came as Secretary Napolitano also announced the Department's intention to rescind the Social Security No-Match Rule, which had never been implemented and was blocked by court order, in favor of the more modern and effective E-Verify system. At a July 23 hearing before the House Oversight and Government Reform Committee's Subcommittee on Government Management, Organization, and Procurement, witnesses testified that E-Verify can handle increased usage that would result from the mandate requiring participation by federal contractors, but there are still parts of the program that should be improved. [Click here to read the DHS release.](#) The U.S. Chamber of Commerce, which opposed the extension of E-Verify to [federal contractors](#), issued a [statement](#) regarding this E-Verify initiative. Meanwhile, the Department of Justice has issued some very useful [Do's and Don'ts for Employers](#) using E-Verify.

House and Senate Committees OK Two-Year Extension of E-Verify, but House Rejects Permanent Status. On June 12, the House Appropriations Committee unanimously approved a fiscal year 2010 appropriations bill for DHS

which extends for two years the federal government's electronic employment verification system.

I-9 News and I-9 Audit Information

CIS Says Current I-9 Form to Remain Valid. Employers should continue using the I-9 employment eligibility verification form currently on DHS's Citizenship and Immigration Services (CIS) website despite the form's stated expiration date of June 30, the agency said June 26. The Immigration and Nationality Act requires that employers complete an I-9 for all newly hired employees to verify their identity and authorization to work in the United States. A new version of the I-9 form is under review at the Office of Management and Budget. While OMB reviews the new form, the current I-9 form will not expire, CIS said. [Click here for more information.](#)

ICE Launches Initiative to Step-up Audits of Businesses' Employment Records. U.S. Immigration and Customs Enforcement (ICE) launched a bold, new audit initiative July 1 by issuing Notices of Inspection (NOIs) to 652 businesses nationwide - which is more than ICE issued throughout all of last fiscal year. The notices alert business owners that ICE will be inspecting their hiring records to determine whether or not they are complying with employment eligibility verification laws and regulations. The 652 businesses being presented with a NOI for a Form I-9 audit have been selected for inspection as a result of leads and information obtained through other investigative means. [Click here for the ICE release.](#)

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Premium Processing for I-140s Resumes. USCIS concluded that they are now able to provide Premium Processing Services for I-140 Petitions after evaluating the I-140 backlog reduction efforts and increased I-140 adjudicate efficiencies. USCIS will accept Premium Processing requests for Form I-140 Immigrant Petition for Alien Worker for all categories except: EB-1 Multinational Executives and Managers and EB-2 Members of Professions with Advanced Degrees of Exceptional Ability seeking a National Interest Waiver. By using the Premium Processing Service, the petitioner is guaranteed that USCIS will issue either an approval notice, or where appropriate, a notice of intent to deny; a request for evidence; or open an investigation for fraud of misrepresentation within 15 calendar days of receipt. If USCIS does not take any action within the 15 calendar days, the government will refund the \$1,000 Premium Process fee and continue to process the request as part of the Premium Process Service.

Fiscal Appropriations for the Department of Homeland Security Bill. On July 9, the U.S. Senate passed the FY10 Department of Homeland Security Appropriations Act (H.R. 2892) by a vote of 84-6. The \$44.3 billion funding measure also includes new immigration-related provisions representing a mixed bag of worksite enforcement and humanitarian legislation. Sampling of amendments include:

- Amendment #1371, sponsored by Senator Sessions (R-Ala.), which would permanently reauthorize the Basic Pilot/E-Verify program and mandate its use among federal contractors and subcontractors. It also permanently reauthorizes the EB-5 program. The amendment passed by a voice vote.
- Amendment #1399, sponsored by Senator DeMint (R-S.C.), which would require the completion of at least 700 miles of reinforced fencing along the southwest border by Dec. 31, 2010. The amendment passed 54-44.
- Amendment #1415, sponsored by Senator Grassley (R-Iowa), which would allow employers who use E-verify to check the employment eligibility of current employees, not just new hires. The amendment was agreed to by unanimous consent.

- Amendment #1428, sponsored by Senator Hatch (R-Utah), which would allow the foreign-born widows, children and parents of citizens who have died to retain their legal status to seek citizenship for two years after the death, and extend the Religious Workers and Conrad 30 programs for three years. The amendment was agreed to by unanimous consent.

The bill will now head to a conference where leaders from both chambers will attempt to reconcile differences between the House and Senate versions of the bill.

States Increase Review and Passing of New Immigration Laws. While national attention on immigration has declined, state legislatures are deliberating record levels of immigrant-related legislation. In the first half of 2009, state legislation related to immigration topped last year's totals, according to a new report from the National Conference of State Legislatures that was released on July 22 at the group's Legislative Summit in Philadelphia. [Click here for more information.](#)

All Visa Waiver Program Travelers Must Present Form I-94W to Customs and Border Patrol. As of June 15, 2009, CBP posted a notice that, while the Department of Homeland Security continues to work together with the airlines to fully automate the I-94W process, all Visa Waiver Program (VWP) travelers applying for admission at a U.S. port of entry, including VWP travelers who have obtained travel authorization via the Electronic System for Travel Authorization (ETSA), must present a completed Form I-94W, Arrival-Departure Record, to CBP. Travelers from all VWP countries are required to obtain approval through ETSA prior to traveling to the U.S. The VWP is administered by DHS and enables citizens of certain countries to travel to the U.S. for tourism or business for stays of 90 days or less without obtaining a visa.

New 287(g) Partnership Approach. DHS Secretary Janet Napolitano announced on July 10 that ICE has standardized the Memorandum of Agreement (MOA) used to enter into



“287(g)” partnerships; improving public safety by removing criminal aliens who are a threat to local communities and providing uniform policies for partner state and local immigration enforcement efforts throughout the United States. Additionally, recently ICE announced 11 new 287(g) agreements with law enforcement agencies from around the country. The new MOA aligns 287(g) local operations with major ICE enforcement priorities - specifically, the identification and removal of criminal aliens. To address concerns that individuals may be arrested for minor offenses as a guise to initiate removal proceedings, the new agreement explains that participating local law enforcement agencies are required to pursue all criminal charges that originally caused the offender to be taken into custody. The new MOA also defines the objectives of the 287(g) program, outlines the immigration enforcement authorities granted by the agreement and provides guidelines for ICE’s supervision of local agency officer operations, information reporting and tracking, complaint procedures and implementation measures. [Click here for DHS release.](#)

Interesting Immigration News

Bill Introduced in Both Chambers to Provide Tax Break for Firms Offering English Classes.

Legislation (S. 1478, H.R. 3249) was introduced in both the House and Senate during the week of July 20 that supporters say would help immigrants integrate into U.S. society and workplaces, and includes tax breaks for businesses offering English literacy programs to their employees. Under the bill, businesses that provide English language courses to their employees would receive a 20 percent tax credit for those expenses, up to \$1,000 per employee. In addition, teachers who work with immigrants to improve their English language skills would receive tax breaks up to \$750 per year for the first five years of their teaching services and \$500 for each year thereafter for up to 10 years. The bill also would provide funding to the Department of Education to expand English courses. To make sure that states have the resources needed to improve English language classes and expand access to them, the bill would double the amount of funding the

Department of Education provides for states from about \$70 million to \$200 million in fiscal year 2010. The bill also would ensure that the majority of the funding goes to states with the greatest size and growth in their immigrant population. The Senate version of the bill was referred to the Finance Committee. The House version was referred to the Education and Labor and the Ways and Means committees.

For more information on these and other immigration developments, please contact Kathryn Carmichael, kcarmichael@williamsmullen.com or Eliot Norman, enorman@williamsmullen.com.

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