

# BUSINESS IMMIGRATION ALERT

*A complimentary service of the McCandlish Holton Immigration Practice Group*

## IN THIS ISSUE:

- **Implementation of New I-9 Employment Eligibility Verification Form**
- **New H-1B Requirements for Employers Receiving Certain Federal Stimulus Funds**

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### **New I-9 Employment Eligibility Verification Form**

U.S. Citizenship & Immigration Services (USCIS) has released a new I-9 Employment Eligibility Verification form. Beginning April 3, 2009, employers must use this new Form I-9 to verify the identity and work authorization of all newly hired employees. As of April 3, 2009, you may no longer use the old form, but you do not need to prepare new forms for existing employees unless their current employment authorization expires.

Although there are some technical updates, the most significant changes to the Form are: (1) Employers can no longer accept any expired documents for I-9 purposes (such as expired U.S. passports, expired driver's licenses, etc.). Only valid, unexpired documents are acceptable. (2) All identity documents must now contain a photograph. On the old I-9 form, certain documents were acceptable if they provided descriptive information, but no photo.

The new form may be accessed at the USCIS website [here](#). You may download the new rule, as well as a Q&A on the process and the government's handbook for employers (M-274) [here](#).

### **New H-1B Requirements for Employers Receiving Certain Federal Stimulus Funds**

The American Recovery and Reinvestment Act of 2009 (the "stimulus bill") imposes new rules on employers that receive certain government funding and want to hire "new employees" in H-1B status. The new rules generally require employers to recruit U.S. workers (not normally a requirement for H-1B status) and also to confirm that the employer has not "displaced" U.S. workers by hiring H-1B workers. Additional information about the new requirements can be accessed at the USCIS website [here](#).

The new H-1B rules apply to any company that receives funding under Title I of the Emergency Economic Stabilization Act of 2008 (known as the "TARP Bill") or that receives funding under Section 13 of the Federal Reserve Act (which authorizes the Federal Reserve's "Discount Window" for short-term, secured loans to financial institutions and other companies). Generally, these provisions affect financial institutions.

An employer subject to the new H-1B requirements will have to verify that it will not displace U.S. workers performing an "essentially equivalent" position as that being offered to the potential H-1B worker for 90 days preceding and 90 days following the filing of the H-1B petition. The employer must also verify that it has made good faith efforts to recruit U.S. workers for the position before sponsoring the foreign worker for H-1B status.

Companies **not** affected by the new H-1B rules include companies receiving funds under the stimulus bill itself. For example, engineering companies that contract with states to build infrastructure projects funded by the bill are not covered. Also not covered are companies which contract to provide degreed professionals in H-1B status to companies covered by the new rules. Only direct new H-1B hires by banks and other companies receiving TARP money, or credit directly from the Federal Reserve System, are covered. Existing H-1B employees who want to extend H-1B status or existing employees in another nonimmigrant status (e.g. F-1, TN) and want to switch to H-1B are NOT covered.

If you believe you may be subject to the new H-1B requirements, please contact your McCandlish Holton immigration attorney.

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