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## Final Rule Sent by DOL to OMB to Eliminate Labor Certification Substitution; USCIS Proposes Rule to Dramatically Hike Fees

On January 26, 2007 the U.S. Department of Labor (DOL) sent the federal Office of Management and Budget (OMB) a draft of a final rule that would prohibit the substitution of beneficiaries on both pending and approved labor certification applications not yet filed with U.S. Citizenship and Immigration Services (USCIS). (Substitution is the practice currently used by employers of “substituting” a current employee into an approved labor certification originally filed on behalf of an employee who has left the company or sponsoring employer in order to file an immigrant visa-petition/permanent-residence application on behalf of the current employee.) Prior to the new rule’s publication in the Federal Register, and subsequent implementation, the OMB must conduct a final review. Following the review process, which could be completed in anywhere from as few as 30 days to as many as 90 days or longer, the final rule will be recorded into the Federal Register and could enter into effect shortly thereafter.

Given the new rule’s proposal to eliminate the current practice of allowing the substitution of beneficiaries on pending labor certification applications and approved labor certifications, Mintz Levin clients should consider using their existing labor certifications (approvals received for employees who are no longer employed) for substitution before this option is eliminated under the new rule.

Additionally, the DOL has proposed a 45-day deadline for employers to file an I-140 petition with the approved labor certification application.

DOL also seeks to prohibit any payment by a foreign national employee for any expense or cost pertaining to the permanent labor certification process, including costs and attorney fees. Currently, many employers require employees to pay the legal fees for their permanent residence applications. Representing a radical departure from this practice, the final rule will likely eliminate the ability of labor-certification-based

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green card applicants to be financially responsible for the legal fees associated with the labor-certification component of their permanent residence cases.

When DOL first proposed these radical changes in February 2006, these proposals were met with a significant degree of opposition. We won't know the definitive content of the final rule until its formal publication in the Federal Register.

## USCIS Proposes Significant Fee Increases

On January 31, 2007, USCIS proposed a rule to dramatically increase fees for immigration and naturalization applications and petitions. The proposed rule, announced under the banner, "Building an Immigration Service for the 21st Century," would increase immigration filing fees by an average of 66%. A comparison of the current and proposed immigration and naturalization application and petition fees for select types of applications and petitions follows:

| Form No. | Current Fee | Proposed Fee | Difference |
|----------|-------------|--------------|------------|
| I-129    | \$190       | \$320        | \$130      |
| I-130    | 190         | 355          | 165        |
| I-140    | 195         | 475          | 280        |
| I-485    | 325         | 905          | 580        |
| I-539    | 200         | 300          | 100        |
| N-400    | 330         | 595          | 265        |

**Please note that these fee increases have *not* been finalized. Written comments regarding the proposed increases must be received by April 2, 2007.**

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*If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or go to [www.mintz.com](http://www.mintz.com).*

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