



LEGAL ALERT

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Rebecca Winterscheidt
602.382.6343
bwinterscheidt@swlaw.com

Elizabeth J. McNamee
303.634.2092
emcnamee@swlaw.com

Manny Cairo
602.382.6534
mcairo@swlaw.com

Snell & Wilmer
L.L.P.
LAW OFFICES

New Form I-9

The U.S. Citizenship and Immigration Services (USCIS) has revised Form I-9 which is used to verify employment eligibility. Effective February 2, 2009, all employers must use the new Form I-9. The revised I-9 form incorporates the following changes:

1. It requires that all documents presented for verification be current (unexpired);
2. It eliminates Forms I-688, I-688A and I-688B from List A (documents that establish both identity and employment authorization) because these documents are no longer issued and have now expired;
3. It expands List A by adding two documents:
 - A temporary I-551 printed notation on a machine-readable immigrant visa in addition to the foreign passport with a temporary I-551 stamp, and
 - Valid passports for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), along with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI;
4. It allows the use of the new U.S. Passport Card which USCIS previously announced was acceptable.

Effective February 2, 2009, employers may only accept unexpired documents and may only accept documents listed on the revised Form I-9.¹ Employers are required to use the new Form I-9 for re-verifications as well. Failure to do so may expose employers to civil monetary penalties.

The USCIS has prepared a “Questions and Answers” pamphlet for reference. A copy of the same is attached for your reference. The final revised Form I-9 is available on the USCIS website, www.uscis.gov/i-9.

¹ On January 20, 2009, the White House issued a general hold Regulatory Review memorandum that seeks a 60-day extension on all proposed or final regulations that have been published in the Federal Register so that the White House can review questions of law and policy raised by the regulations. At present, there is no clear answer on whether this general hold memo will change the effective date of the new Form I-9. We, therefore, recommend that employers prepare to implement and begin using the new Form I-9 effective February 2, 2009.



Office of Communications

U.S. Citizenship
and Immigration
Services

Questions and Answers

Dec. 12, 2008

USCIS REVISES EMPLOYMENT ELIGIBILITY VERIFICATION FORM

U.S. Citizenship and Immigration Services (USCIS) has submitted to the *Federal Register* an interim final rule that revises the list of documents acceptable for the Form I-9, Employment Eligibility Verification, process. The revised form will improve the security of the employment authorization verification process. Employers will be required to use the revised form for all new hires and to reverify any employee with expiring employment authorization beginning 45 days after publication in the *Federal Register*. The current edition of the Form I-9, dated 06/05/2007, will no longer be valid for use 45 days after publication of the rule in the *Federal Register*. The interim final rule and an informational copy of the revised Form I-9 will be available for public comment at www.regulations.gov for 45 days after publication in the *Federal Register*. The revised Form I-9 will be available at www.uscis.gov 45 days after publication in the *Federal Register*. The *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* is being updated to reflect these changes and will be published on the USCIS Web site in the near future.

BACKGROUND

All employers, agricultural recruiters and referrers for a fee are required to verify the identity and employment authorization of each person they hire for employment in the United States. This requirement is set forth by section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)). USCIS has revised the Form I-9 to bring it into compliance with the governing statutes. The most significant change to the Form I-9 is the requirement that all documents presented during the Form I-9 completion process be unexpired. This and other revisions are detailed below.

Questions and Answers

Q. Why is a revised Form I-9 being released?

A. The revised Form I-9 reflects changes made to the list of documents acceptable for the Form I-9 in accordance with the Department of Homeland Security's (DHS) recent interim final rule. The rule furthers DHS's ongoing effort to increase the security of the employment authorization verification process. The new rule:

- Requires that all documents presented during the verification process be unexpired;
- Eliminates List A identity and employment authorization documentation Forms I-688, I-688A, and I-688B (Temporary Resident Card and outdated Employment Authorization Cards);
- Adds foreign passports containing certain machine-readable immigrant visas to List A;
- Adds to List A as evidence of identity and employment authorization valid passports for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), along with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI ; and



- Makes technical updates.

Q: What is the difference between the revised Form I-9 and the old one?

A: The biggest difference in the revised Form I-9 is that all documents presented during the verification process must be unexpired. Other than several technical updates, the following documents have been added or removed:

Two documents have been added to List A (Documents that Establish Both Identity and Employment Authorization) on the List of Acceptable Documents:

- A temporary I-551 printed notation on a machine-readable immigrant visa in addition to the foreign passport with a temporary I-551 stamp; and
- A passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with a valid Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

Although prior regulations refer to temporary I-551 “stamps,” the Department of State for several years has been affixing machine-readable immigrant visas (MRIVs) that contain a pre-printed temporary I-551 notation in the foreign passports of aliens immigrating to the United States. DHS therefore is updating the regulations to reflect this alternate temporary I-551 document with the pre-printed temporary I-551 notation on MRIVs.

Additionally, under both the preexisting Compacts with the FSM and the RMI, and the Compacts as amended, most citizens of the FSM and RMI are eligible for admission to the United States as nonimmigrants. Such citizens of the FSM and RMI have the privilege of residing and working in the United States. Amendments to the Compacts include provisions that eliminated the need for citizens of the FSM and RMI to obtain an Employment Authorization Document (Form I-766). By adding to List A the FSM and RMI passports, with a valid Form I-94 or I-94A, citizens of the FSM and RMI will be able to use their passports in the I-9 process without the need to obtain a separate Employment Authorization Document.

Three documents were removed from List A of the List of Acceptable Documents:

- Form I-688, Temporary Resident Card;
- Form I-688A, Employment Authorization Card; and
- Form I-688B, Employment Authorization Card.

Q. Where can I obtain a copy of the revised Form I-9?

A. An informational copy of the revised Form I-9 and the interim final rule can be found in the Federal Register. Beginning 45 days after publication in the *Federal Register*, the revised Form I-9 for use by the public can be downloaded from www.uscis.gov. Paper copies of the Form I-9 can be ordered by calling USCIS at 1-800-870-3676.

Q. Why can't I present an expired document?

A. DHS wants to ensure that documents presented for use in the Form I-9 process must be valid and reliably establish both identity and employment authorization. Expired documents may not portray a valid status. They are also prone to tampering and fraudulent use. This change takes into account the limits placed on these documents by their issuing authorities. If a document does not contain an expiration date, such as a Social Security card, it is considered unexpired.



Q. Why is only one type of Employment Authorization Document left in List A?

A: Forms I-688, I-688A and I-688B are older employment authorization documents. These are no longer issued and have now expired.

Q. In Section 1 – Employee Information and Verification, of the revised Form I-9, an employee can now attest to being either a citizen or noncitizen national of the United States. Who is a noncitizen national?

A: Noncitizen nationals are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad. More information on noncitizen U.S. nationals can be found on www.travel.state.gov.

Q: Where can I get the revised Form I-9 and the Employer Handbook (M-274)?

A: An informational copy of the revised Form I-9 and the interim final rule are available online through the *Federal Register*. Beginning 45 days after publication in the *Federal Register*, when the interim final rule takes effect, the revised Form I-9 will be available at www.uscis.gov. The *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* is currently being updated to reflect the revision to the Form I-9 and will be available at www.uscis.gov in the near future. Employers who do not have computer access can order USCIS forms by calling our toll-free forms line at 1-800-870-3676. People can also request USCIS forms and information on immigration laws, regulations, and procedures by calling the National Customer Service Center toll-free at 1-800-375-5283.

Q: As an employer, can I accept documents that used to be on the Form I-9 but aren't now?

A: No. Beginning 45 days after publication in the *Federal Register*, employers may only accept documents listed on the List of Acceptable Documents on the revised Form I-9. When an employee must be reverified because his or her employment authorization has expired, employers should ensure that they use the revised Form I-9 with its new List of Acceptable Documents. An employer may not reverify the employee by completing Section 3 – Updating and Reverification, of the previous version of the Form I-9.

Q: Are there any changes in the way the revised Form I-9 is completed?

A: No. The revised form should be completed exactly the same way as the old one was. Employers should be mindful of changes to the types of documents that they may accept in Section 2 – Employer Review and Verification.

Q: Is the Form I-9 available in different languages?

A: The Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may have employees complete the Spanish version for their records. Employers in the 50 states and other U.S. territories may use the Spanish version as a translation guide for Spanish-speaking employees, but must complete the English version and keep it in their records. Employees may also use or ask for a translator/preparer to assist them in completing the form.

Q: Are employers in Puerto Rico required to use the Spanish version of the Form I-9?

A: No. Employers in Puerto Rico may use either the Spanish or the English version of the revised Form I-9 to verify employees.



Q: When should employers begin using the revised version of the Form I-9?

A: Employers must use the revised Form I-9 for all new hires (and reverifications) beginning 45 days after publication in the *Federal Register*. The current edition of the Form I-9, dated 06/05/2007, will no longer be valid for use as of that date. Employers who continue to use the 06/05/2007 edition of the Form I-9 on or after that date may be subject to civil money penalties. An informational copy of the revised Form I-9 can be viewed online at www.regulations.gov. Beginning 45 days after publication in the *Federal Register*, USCIS will make the revised Form I-9 available for use by the public at www.uscis.gov.

Q: Do I need to complete the revised version of the Form I-9 for all my employees or just the new ones?

A: Employers only need to complete the revised version of the Form I-9 (Rev. xx/xx/09)N for new employees. Employers should not be completing Forms I-9 for existing employees. However, employers must use the Form I-9 when their employees require reverification.

Q: How can I formally comment on this interim final rule?

A: Please submit written comments on or before 60 days after publication in the *Federal Register* by one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:**
Chief, Regulatory Management Division MS 2210
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave., NW (Suite 3008)
Washington, DC 20529-2210

Please reference DHS Docket No. USCIS-2008-0001 on your correspondence. This address may be used for paper, disk, or CD-ROM submissions.

- **Hand Delivery/Courier:** Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave., NW (Suite 3008)
Washington, DC 20529-2210
Contact Telephone: (202) 272-8377

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