

U.S. CITIZENSHIP AND IMMIGRATION SERVICES ANNOUNCES REVISED FORM I-9 EMPLOYMENT ELIGIBILITY VERIFICATION

by Frida P. Glucoft and Janice K. Luo

The U.S. Citizenship and Immigration Services (USCIS) has announced that a revised Employment Eligibility Verification Form I-9 is available for immediate use. Employees must transition to the revised form no later than December 26, 2007. All U.S. employers are required to complete a Form I-9 for each new hire in order to document authorization to work in the U.S.A. The new Form I-9 has been revised for consistency with the documentation reduction requirements of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA) and USCIS' ongoing efforts toward reducing the number of documents used to confirm identity and work eligibility.

Most notably, the new form contains the following revisions:

1. Documents removed from List A:

The revised Form I-9 removes five (5) documents from List A of the Acceptable Documents because these documents lack sufficient features to deter counterfeiting, tampering and fraud. These documents are the following:

- Certificate of U.S. Citizenship (Form N-560 or N-570)
- Certificate of Naturalization (Form N-550 or N-570)
- Form I-151 Alien Registration Receipt Card (the long, out-of-date version of the "green card")
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571)

2. Addition of Acceptable Documents to List A:

The most recent version of the Employment Authorization Document (Form I-766) was added to List A of the Acceptable Documents. In addition, all of the Employment Authorization Documents with photographs -- I-688, I-688A, I-688B, and I-766 -- are now included as acceptable.

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Q: WHAT SHOULD AN EMPLOYER DO IF AN UPDATE OR REVERIFICATION OF FORM I-9 IS NEEDED FOR AN EMPLOYEE WHO FILLED OUT AN EARLIER VERSION OF THE FORM?

A: IF A VERSION OF THE FORM I-9 DATED BEFORE JUNE 5, 2007, WAS USED WHEN AN EMPLOYER ORIGINALLY VERIFIED THE EMPLOYEE, THE EMPLOYEE MUST PROVIDE ANY DOCUMENT(S) HE OR SHE CHOOSES FROM THE *CURRENT* LIST OF ACCEPTABLE DOCUMENTS. THE EMPLOYEE'S DOCUMENTS MUST BE ENTERED IN SECTION 3 OF THE *RECENT* VERSION OF THE FORM I-9.

Q: MUST A NEW HIRE PROVIDE HIS OR HER SOCIAL SECURITY NUMBER IN SECTION 1 OF THE REVISED FORM I-9?

A: NO. PROVIDING THE SOCIAL SECURITY NUMBER IS VOLUNTARY. THE EXCEPTION IS FOR EMPLOYEES HIRED BY

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3. Employee's Social Security Number is not required.

The revised I-9 instructions indicate that a new hire employee is not required to provide the Social Security Number in Section 1 of the Form I-9, unless the employee is employed by an employer who participates in E-Verify.

4. Employers may sign and retain Form I-9 electronically.

The section on Photocopying and Retaining Form I-9 now includes information about electronic signatures and retention of Form I-9.

The new Form I-9 with a revision date of June 5, 2007 (printed on the lower right corner of the form), is the only version of the form that is valid for use. All previous versions, in English or Spanish, are no longer valid. Employers must use the amended Form I-9 for all individuals hired on or after November 7, 2007. The Department of Homeland Security has published a Notice in the *Federal Register* that provides employers with a 30-day period, beginning November 26, 2007, to transition to the new Form I-9. Therefore, employers who fail to use the revised form by December 26, 2007, will be subject to applicable penalties.

All U.S. employers are encouraged to commence use of the revised form immediately for new employees and for required reverification of existing employees. Updated I-9s are not required for existing employees who are not subject to reverification.

Both the revised form (<http://www.uscis.gov/files/form/i-9.pdf>) and the "Handbook for Employers, Instructions for Completing the Form I-9" (<http://www.uscis.gov/files/nativedocuments/m-274.pdf>) are available online.

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EMPLOYERS PARTICIPATING IN THE USCIS E-VERIFY PROGRAM (THE ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION PROGRAM FORMERLY KNOWN AS THE BASIC PILOT PROGRAM OR ELECTRONIC EMPLOYMENT VERIFICATION (EEV)).

Q: ARE EMPLOYERS REQUIRED TO PARTICIPATE IN THE E-VERIFY PROGRAM?

A: NO. THE E-VERIFY PROGRAM IS VOLUNTARY FOR EMPLOYERS. HOWEVER, THERE ARE LIMITED EXCEPTIONS, SUCH AS SOME FEDERAL GOVERNMENT EMPLOYERS AND VIOLATORS OF CERTAIN IMMIGRATION LAWS WHO HAVE BEEN ORDERED TO PARTICIPATE. IN ADDITION, SEVERAL STATES AND CITIES HAVE PASSED LEGISLATION WHICH REQUIRES CERTAIN EMPLOYERS TO PARTICIPATE IN THE E-VERIFY PROGRAM.

This alert is provided as a service to our clients and friends. While the information provided in this publication is believed to be accurate, it is general in nature and should not be construed as legal advice.