

## A New Year, A New Form I-9

On November 14, 2016, the United States Citizenship and Immigration Services (USCIS) released a [new Form I-9](#) (Rev. 11/14/2016 N) to replace the prior form which expired on March 31, 2016. Beginning [January 22, 2017](#), employers must use this updated form for the initial employment verification of all new hires, as well as any applicable employment re-verifications. Prior versions of the Form I-9 will no longer be valid. The new Form I-9 has an expiration date of August 31, 2019.

By way of background, the Immigration Reform and Control Act (IRCA) requires employers to verify the identity and legal work authorization of all individuals, including U.S. citizens and legal permanent residents, hired after November 6, 1986. Specifically, the I-9 verification process requires individuals to present facially valid documentation to enable employers to verify an individual's identity and to further confirm that the individual is authorized to work in the United States. For record-keeping purposes, an employer must retain completed Form I-9s for either three years after an individual's date of hire or one year after the employment relationship ends — whichever is later.

According to a [press release](#) issued by the USCIS, the new Form I-9 is “designed to reduce errors and enhance form completion using a computer.” Dubbed a “smart form,” the online version of this updated form now includes various enhancements intended to minimize technical errors commonly made by employers and employees. For example, some of the new I-9 smart form features include the following:

- Embedded prompts in the online Form I-9 which provide instructions on how to properly complete that particular question.
- Drop down lists for certain questions (e.g., citizenship/immigration status, number of preparers/translators, state, document title, issuing authority, etc.) and calendar entries for requested dates (e.g., date of birth, document expiration dates, etc.).
- The opportunity to list/enter information for more than one preparer and/or translator (if applicable).
- Auto-population of “N/A” in certain blank fields (where applicable).
- Auto-population of the employee's name and citizenship/immigration status into Section 2 based upon responses provided in Section 1.
- A mechanism which prompts an individual about missing information and/or incomplete fields — highlighted in red — before moving from one section to another within the form.
- An “error-checking mechanism” which provides prompts and error messages where there may be potential response inconsistencies between citizenship/immigration status and proffered I-9 supporting documentation.
- A “Start Over” option that enables an individual to clear the Form I-9 and start anew, if necessary.
- A “Print” option that enables an individual to print the Form I-9 once data has been entered.
- An “Instructions” option which automatically links an online user to a separate copy of the Form I-9 instructions.
- Automatic generation of a quick response (QR) code.

Employers are reminded that even if they use the enhanced online version of the Form I-9, they must still print the document, gather the necessary handwritten signatures and store the completed form pursuant to the applicable I-9 recordkeeping requirements.

In addition to the electronic enhancements mentioned above, the USCIS has made several other notable revisions to the new Form I-9. A summary of the main changes within each section of the form appears below.

## Improved Instructions

In this latest round of revisions, the USCIS has separated the instructions from the actual Form I-9. In addition, the USCIS has amended the instructions to provide more detail and guidance in an effort to reduce errors during the verification process. The Form I-9 instructions are now 15 pages in length. Employers should note that they are still required to make either an electronic or hard-copy of these instructions available to employees when they complete the Form I-9.

### **Section 1: Employee Information and Attestation**

- The “Other Names Used” field has been renamed to “Other Last Names Used (if any).” This field has changed to require only last name changes in an effort to protect the privacy of individuals (transgendered and others) who have changed their first names, as well as to avoid potential discrimination issues.
- Foreign national employees are no longer required to provide both their Form I-94 number and foreign passport information in Section 1. Instead, the updated form requires foreign national workers to supply one response from the following three options: (i) an Alien Registration Number; or (ii) a Form I-94 Admission Number; or (iii) a foreign passport number.
- The employer must now affirmatively answer whether he/she has used a preparer/translator for completion of Section 1 of the Form I-9. If a preparer/translator has been used, the updated form now provides additional spaces to enter multiple preparers/translators.

### **Section 2: Employer or Authorized Representative Review and Verification**

- Addition of the employee’s “Citizenship/Immigration” status at the beginning of Section 2. (This information should be consistent with what the employee has listed in Section 1.)
- A new dedicated box/blank section where employer representatives may enter additional information/notes previously written in the margins (e.g., annotations for OPT extensions, receipts, Temporary Protected Status, etc.).

As noted above, the new Form I-9 includes new electronic features to facilitate fewer errors during the completion process. Reducing the number of technical/paperwork violations on the Form I-9 has become increasingly important since the [federal government implemented higher civil fines](#) against employers who commit immigration-related offenses, which includes, among other things, Form I-9 and E-Verify violations. With respect to I-9 paperwork errors (e.g., errors or omissions on the Form I-9), the federal government raised the civil penalty range from \$110-\$1,110 (per relevant individual) to \$216-\$2,156 (per relevant individual) — an increase of approximately 96%. The new penalties took effect on August 1, 2016.

Given the anticipation of heightened immigration enforcement by the new administration, employers may be well-served to review their I-9 procedures and records to ensure compliance with IRCA.

If you have questions about the new Form I-9 or general I-9 compliance issues, contact [Caroline M. Westover](#), any of the [attorneys](#) in our [Immigration Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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