
BOND INFORMATION MEMO

Immigration Law

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USCIS Issues Much Anticipated Revised Form I-9

On March 8, 2013, the United States Citizenship and Immigration Services (the "USCIS") released the long-awaited revisions to the Form I-9 (Rev. 03/08/13)N. In an August 2012 blog post, we informed employers that they could continue to use the then-current version of the form – despite its August 31, 2012 expiration date. With the revised Form I-9 now in circulation, the USCIS has strongly encouraged employers to immediately use the updated form, though the agency has provided a 60-day grace period (until May 7, 2013) during which employers may continue to use select versions of the Form I-9 – (Rev. 02/02/09) and (Rev. 08/07/09) – for verifying the employment eligibility of new hires. As of March 8, 2013, however, employers must use the revised Form I-9 (Rev. 03/08/13)N for conducting reverification(s) of existing employees. After May 7, 2013, employers will no longer be permitted to use any expired version of the Form I-9. Employers who fail to adhere to these phase out guidelines may be subject to applicable fines and penalties.

By way of background, the Immigration Reform and Control Act of 1986 ("IRCA") requires employers to verify the identify and legal authorization of all individuals, including U.S. citizens, hired after November 6, 1986, by requiring the individuals to present facially valid documentation. In order to complete the I-9 verification process, the employer is required to verify the individual's identity and to further confirm that the individual is authorized to accept employment in the United States. For record-keeping purposes, an employer must retain completed Form I-9s for the later of three (3) years after an individual's date of hire or one (1) year after the employment relationship ends.

One of the USCIS' primary goals for this revised Form I-9 is to "minimize errors in form completion." Accordingly, there are several key revisions which aim to accomplish this objective. First and foremost, employers will notice that the new Form I-9 itself is no longer a one-page document, but now consists of two pages.

Second, the new Form I-9 instructions / List of Acceptable Documents has increased from five (5) pages to nine (9) pages (inclusive of the 2-page form). The expanded set of directions is designed to provide both employers and employees with additional guidance and examples in an effort to assist the parties to accurately complete the form; detailed guidance has been noticeably absent from prior versions of the Form I-9. For instance, the new Form I-9 instructions explain that an international address may not be used by the individual to complete the address field, unless the employee is a border commuter from Canada or Mexico. Furthermore, the new instructions offer the following as a helpful example to address timing/counting issues for completion of the Form I-9: "[I]f an employee begins employment on Monday, the employer must complete Section 2 by Thursday of that week."

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In addition to improving the instructions, the USCIS has made a number of other key revisions to the new Form I-9. A summary of the main changes within each section of the form appears below.

Section 1: Employee Information and Attestation

- A clear reminder has been inserted at the beginning of Section 1 to clarify and remind both employers and employees that this section of the Form I-9 must be completed by the employee no later than the first business day of employment.
- “Maiden Name” data field has been renamed to “Other Names Used (if any).”
- The Social Security Number data field has been reformatted to specifically require a nine-digit number; however, this data field continues to remain **voluntary**, unless the employer is enrolled in the E-Verify Program.
- New data fields have been added which permit an individual to voluntarily provide email addresses and telephone numbers; since these data fields remain optional, however, employers are instructed to place “N/A” in the field if the employee does not provide information responsive to the question(s).
- A new data field has been added to clarify that a foreign national authorized for employment may provide the A-Number/USCIS Number **OR** Form I-94 Admission Number.
- New data fields have been included so that the foreign national may provide information regarding a foreign passport number and country of issuance in those instances where the foreign national provides an Admission Number (I-94), issued by the U.S. Customs and Border Protection, as part of the I-9 process.
- The USCIS has included a placeholder where a 3-D Barcode may eventually be added. At the present time, however, the 3-D Barcode has no functional purpose.
- Finally, the USCIS has added a stop sign symbol at the end of Section 1 to deter and prevent employees from inadvertently completing Section 2.

Section 2: Employer or Authorized Representative Review and Verification

- “Authorized representatives” (those individuals who do not necessarily work for the employer, but have been granted limited power to conduct employment eligibility verification on behalf of the employer in certain circumstances) are expressly recognized as having the ability to complete Section 2 (in addition to employer representatives).
- Section 2 now specifically states that this section must be completed and signed within three (3) business days of the employee’s first day of employment.
- Employers are now required to add the employee’s name (first / middle initial / last) in the new data field provided in Section 2.
- The USCIS has clarified that an employer’s employment eligibility verification obligations are triggered the day the employee begins to work for pay (i.e., commencement of employment for wages or other remuneration). As such, this is reflected on the new Form I-9, which no longer asks for when an employee began employment, but rather the employee’s first day of employment.
- Additional data fields – document number and expiration date – have been added for List A documents. These additional spaces will enable employers to record employment authorization expiration dates for exchange visitors and SEVIS numbers and program end dates for students. Prior versions of the Form I-9 did not provide sufficient space for employers to record all of the necessary information.

Section 3: Reverification and Rehires

The new Form I-9 also includes minor revisions to Section 3. For instance, the revised form clarifies that only List A and List C documents need to be reverified if the employee's previous grant of employment authorization has expired; List B documents, which are used to establish identity, are notably omitted from the list of documents that need to be reverified.

Finally, the List of Acceptable Documents has also been revised and updated. Specifically, List C now makes clear that a Social Security Card is a valid document for purposes of establishing work authorization, unless it contains one of the following 3 notations on the face of the card:

1. "NOT VALID FOR EMPLOYMENT"
2. "VALID FOR WORK ONLY WITH INS AUTHORIZATION"; or
3. "VALID FOR WORK ONLY WITH DHS AUTHORIZATION."

In this age of heightened government enforcement, the release of a newly revised Form I-9 provides employers with the perfect opportunity to review their I-9 procedures to ensure compliance with IRCA.

If you have questions about the new Form I-9 or I-9 compliance issues, please contact the Bond Immigration Practice Group.

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