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Reminder to employers that the new Form I-9 should be used to verify eligibility for employment beginning on April 3, 2009. The new form is available on the USCIS website.

Countdown to Effective Date of New I-9

By Jorge R. Lopez and Lisa A. Cottle

The new Form I-9 (revision date 2/02/2009) is currently scheduled to go into effect on April 3, 2009. The new I-9 form is available on the U.S. Citizenship and Immigration Services website. The new I-9 and the interim rule creating it were originally published in the Federal Register on December 17, 2008, with a correction published on January 16, 2009. However, on January 30, 2009, the U.S. Department of Homeland Security (DHS) announced that implementation of the new I-9 would be postponed until April 3, 2009. Notice of the delay appeared in the February 3, 2009 edition of the Federal Register.

The interim rule alters both the I-9 form and the List of Acceptable Documents by changing some of the language on the form itself and adding to and deleting from the List of Acceptable Documents. In section One, the employee portion of the Form I-9, DHS has amended the language to include a noncitizen national. A noncitizen national includes someone born in American Samoa, certain citizens of the Trust territories of the Pacific Islands, and some children of noncitizen nationals born outside the United States. See *Littler ASAP, USCIS Issues Interim Final Rule on I-9 Employment Verification*.

The remainder of the changes imposed by the interim rule deal with Section 2, the employer portion of the Form I-9, and the List of Acceptable Documents. When the new I-9 goes into effect, only unexpired documents will be acceptable for I-9 purposes. Additionally, the new List of Acceptable Documents include the U.S. Passport Card as a List A document. Two other documents have also been added to List A, and they will verify both identity and work authorization:

1. A foreign passport notation on a machine-readable immigrant visa that is pre-printed with a temporary I-551 notation (confirmation of legal permanent residence status); and
2. A passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with a valid Form I-94 demonstrating valid status pursuant to the Compact of Free Association with the United States.

Since releasing the new I-9, the DHS also published a final rule in the Federal Register stating that a military identification card issued by the Armed Forces is acceptable as a List A document evidencing both identity and employment authorization if the employer is the U.S. military and the Form I-9 is completed in the context of military enlistment. Apart from the U.S. Armed Forces (the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard), no other employer may accept a military identification card as a List A document. Nor is the military identification card acceptable as a List A document for any purpose other than enlistment in one of the Armed Forces. However, the military identification card continues to remain otherwise acceptable as a List B document evidencing identity with respect to employment by private and public employers alike.

Additionally, in anticipation of the new I-9's upcoming April 3, 2009, effective date, an updated M-274 Handbook for Employers was released by the U.S. Bureau of Citizenship and Immigration Services (CIS) on March 19, 2009, and it is available at www.uscis.gov. The revised Handbook reflects the new I-9's changes and additional requirements, as well as providing an explanation of the E-Verify program. Employers are encouraged to review the Handbook and understand its requirements in advance of the form's April 3 effective date.

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