

Immigration Alert

MAY 1, 2012

Mintz Levin is Monitoring Proposed Changes to Form I-9: Comments May Be Submitted until May 29, 2012

On March 27, 2012, U.S. Citizenship and Immigration Services (USCIS) published a notice in the *Federal Register* inviting the public to comment on proposed revisions to Form I-9. As you may know, employers are required under the Immigration Reform and Control Act of 1986 to complete a Form I-9 during the hiring process to verify an individual's identity and employment eligibility. Historically, employers have found completing Form I-9 confusing and burdensome. The instructions have not always been clear to employers about the types of documents that an individual may offer to prove employment eligibility. On this front, the proposed changes are an overall positive development for employers.

How is Form I-9 changing?

The proposed revisions to Form I-9 include a more user-friendly two-page layout, with more detailed instructions to a new hire and an employer on properly completing the form. We think that employers will find the expanded I-9 instructions useful. The currently proposed Form I-9 may be found online at:

<http://www.regulations.gov/#!documentDetail;D=USCIS-2006-0068-0013>. The key revisions under proposal are:

- Adding data fields for a foreign passport number and country of issuance where a passport and Form I-9 are evidence of an individual's identity and work authorization;
- Providing detailed guidance to employers with respect to accepting receipts as evidence of employment eligibility; and
- Creating fields for document numbers and expiration dates for "List A" documents.

One of the most helpful changes to the instructions is clarification regarding acceptable versions of social security cards for the I-9 process. The Social Security Administration issues several versions of social security cards. The proposed instructions would provide specific examples of restricted social security cards that, when presented alone, are insufficient evidence of employment authorization. Additionally, the proposed instructions regarding the I-9 reverification are clear and more explicit than the instructions in the current form. These revisions should prove useful for employers.

Comments due by May 29, 2012

Please contact your immigration attorney at Mintz Levin if you are interested in submitting a comment to USCIS regarding the proposed revisions to Form I-9. Comments would need to be focused on the proposed content of the form or revisions to the instructions. This comment process is not for general changes to the I-9 process, legal requirements, or regulations. USCIS also did not include any revisions to E-Verify in their notice. The public comment period ends May 29, 2012.

Mintz Levin will continue to monitor all developments with the new version of Form I-9. Until a new version of Form I-9 is approved, employers must continue to use the current version of the I-9 form which was revised on 8/7/2009 and expires on 8/31/2012.

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