

New Form I-9 and Handbook for Employers

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The Department of Homeland Security agency U.S. Citizenship & Immigration Services (“USCIS”) announced on November 7, 2007, that it has released a new version of Form I-9, [Employment Eligibility Verification](http://www.uscis.gov/files/form/I-9.pdf) (<http://www.uscis.gov/files/form/I-9.pdf>), as well as the M 274, Handbook for Employers, [Instructions for Completing the Form I-9](http://www.uscis.gov/files/nativedocuments/m-274.pdf) (<http://www.uscis.gov/files/nativedocuments/m-274.pdf>). Employers are required to complete an I-9 for all new employees. USCIS has advised that it intends to make additional changes in 2008 and issue another version of the I-9 at that time.

What has changed on the I-9?

The list of acceptable documents has been reduced to conform to the interim list that was published in 1997, but which was never incorporated into the I-9 form itself. The following documents are no longer acceptable for establishing both identity and employment eligibility and have been removed from the I-9:

- Certificate of Citizenship (Form N 560 or N 561)
- Certificate of Naturalization (Form N 550 or N 570)
- Form I-151 (a long outdated version of the Alien Registration Receipt Card (“green card”)) *Note, however, that an unexpired Permanent Resident Card or Alien Registration Receipt Card is still an acceptable document.*
- Unexpired Re-entry Permit (Form I-327)
- Unexpired Refuge Travel Document (Form I-571)

The revised I-9 also modifies when a Form I-94 is acceptable. An I-94 Arrival-Departure document is issued to foreign nationals who might or might not be authorized to work in the United States. The new list provides clearer guidance on when the I-94 is acceptable:

- *Prior version:* Unexpired foreign passport with an attached Form I-94 indicated unexpired employment authorization will be acceptable.
- *New version:* Unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien’s nonimmigrant status, if that status authorizes the alien to work for the employer will be acceptable.

Another change in the new I-9 form is that the instructions on Section 1 now inform employees that providing a Social Security number is voluntary for I-9 purposes, unless the employer participates in the USCIS E-Verify Program. In E-Verify, an employer fills out an online form with the new employee's name, date of birth and Social Security number, and - if the new hire states she is not a U.S. citizen - the employee will need to provide her "A" (alien) number or I-94 number. This information is checked against Social Security Administration databases to verify the name, Social Security number, and date of birth of newly-hired employees, regardless of citizenship. For more background information and some comments on the pros and cons of the E-Verify system, read [here](http://www.epic.org/privacy/surveillance/spotlight/0707/) (<http://www.epic.org/privacy/surveillance/spotlight/0707/>).

Must employers begin using the new I-9 immediately?

Employers need to begin using the new I-9 immediately. There is *no* grace period for continuing to use the old form. Most importantly, employers can *no longer* accept the documents removed from the old list.

What guidance is there for completing the new I-9?

The Form I-9 instructions and the updated Handbook provide guidance. In particular, the Handbook expands the Question and Answer section to provide valuable information to employers. For example, it updates the guidance on the good faith defense against employer sanctions for hiring an unauthorized alien after complying with I-9 requirements. It also updates the samples of acceptable documents.

What are the penalties for noncompliance?

The prior version of the Handbook had not been updated since 1991. The updated version lists the current civil penalties, which range from \$110 for I-9 form errors, to \$11,000 for employment of an unauthorized alien. Criminal penalties and penalties for unlawful discrimination are described as well.

What else should employers know about the changes to the I-9?

It is not clear why the Department of Homeland Security chose to release the new version of the I-9 at this time, when it intends to initiate further changes in the coming year. Regardless of the rationale, it reflects the Administration's focus on immigration and workforce issues. Employers need to ensure that their I-9 forms are properly and fully completed, but in doing so, they should avoid any discriminatory actions. If you have any questions about I-9 compliance or would like assistance with immigration issues, we welcome you to contact us.

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