



## Labor & Employment ADVISORY ■

**NOVEMBER 18, 2016**

### Get Smart: USCIS Releases the New Form I-9

U.S. Citizenship & Immigration Services (USCIS) has now unveiled the new Form I-9, which employers will be required to use starting on **January 22, 2017**. The new form is marked "11/14/2016 N" in the lower left-hand corner and contains a number of changes and updates from the prior version. A copy of the new Form I-9 and the new instructions can be accessed [here](#).

All U.S. employers are required to complete and retain a Form I-9 for each newly hired employee who has been hired after November 6, 1986, regardless of citizenship status and/or nationality. As of January 22, 2017, all U.S. employers must use the new Form I-9 to verify the identity and employment authorization of any newly hired employees on and after that day. Between now and January 21, 2017, employers may choose to either use the new version or continue to use the prior version (marked "03/08/2013 N") to verify the identity and employment authorization of newly hired employees.

The new Form I-9 has expanded in length and now has three pages that must be completed rather than two, with the "Lists of Acceptable Documents" now appearing on page 4 of the new form. In a departure from prior versions, the Form I-9 instructions are now contained in a separate 15-page document. Employers should carefully review the new form and its instructions and implement them within the noted time period.

Some of the key changes in the new I-9 and its instructions include the following:

- All fields must be completed with the applicable answer or "N/A" (it is no longer permissible to leave any fields blank).
- Section 1 contains a field for "Other *Last* Names Used" (in place of "Other Names Used" to clarify it only applies to surnames and family names).
- Clarifies that the employee phone number and email in Section 1 are still optional, so if the employee chooses not to provide that information, he/she should record "N/A."
- Contains a mandatory box on page 1 for the employee to check regarding whether or not preparers and/or translators were used (and expanded preparer/translator attestation sections when either – or multiple – have been utilized).

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- Section 1 Citizenship/Immigration Status selection box now has a coordinating number (1, 2, 3 or 4) that must be selected by the employer on top of page 2 in Section 2.
- An optional “Additional Information” box has been added to Section 2 to allow an employer to record extra information as needed (e.g., AC21/H-1B portability notations, “240-day Ext.,” other information usually written in the margins of the form). Employers may also choose to record E-Verify case numbers here, per USCIS. As noted, this box is optional, so it may be left blank if circumstances do not warrant its use.

Employers will continue to have the current options of paper execution and/or storage as well as electronic execution and/or storage. In order to constitute a valid electronically executed (or retained) Form I-9 under the law, any electronic systems used for Form I-9 completion or storage (including those through third-party vendors) must meet the standards of 8 C.F.R. § 274a.2(e)–(i) for electronic completion or storage, including a proper audit trail and the required indexing, retrieval and security features.

Now, too, if the new Form I-9 is accessed through the link and opened using Adobe, the new form has some added “smart” features to provide certain feedback and prevent certain errors when filled out through Adobe. Specifically, the smart Form I-9 when accessed through Adobe provides information drop-down boxes for all fields and is designed to check for required data in certain fields before proceeding. It is designed in some places to limit response options based on data already entered (e.g., where the employee has indicated he/she is an “alien authorized to work”/status number “4,” a “U.S. passport” cannot be selected in List A of Section 2). Even though this smart form can be filled out by the parties online, doing so does not constitute valid electronic completion under the law since it lacks the required audit trail and other features. As a result, when the smart Form I-9 is accessed through the government’s website and opened in Adobe, it still must be printed on paper and signed by both the employee and the employer, within the required time frame, in order to constitute a properly executed Form I-9.

Alston & Bird will be hosting two free webinars regarding the new Form I-9. Please contact **Laura Vargas** at [laura.vargas@alston.com](mailto:laura.vargas@alston.com) or 404.881.7792 for more information.

If you would like to receive future *Labor & Employment Advisories* electronically, please forward your contact information to [labor.advisory@alston.com](mailto:labor.advisory@alston.com). Be sure to put "subscribe" in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

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