The New I-9 - Are you Ready?

Sarah Cunningham, Specialty Learning Consultant, Moderator
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Housekeeping

- Resource panel on right includes the PowerPoint, and an I-9 toolkit. There is an toolkit for TotalSource and Resource Clients and a separate toolkit for Comprehensive Services clients.

- The toolkit is designed to help you complete Form I-9. It also includes links to the latest Form I-9, best practice information largely patterned after official government guidance, a link to the on demand recording of this webcast and a sample internal I-9 audit checklist.

- Questions were submitted in advance and most will be covered during the presentation. Please feel free to reach out to your Human Resources Business Partner (TotalSource and Resource clients) or your service team or Relationship Manager (Comprehensive Services Clients) if you have any additional questions.

- ADP Electronic I-9 has been updated.
Michael Neifach

• Principal, Jackson Lewis, P.C.
• Co-Leader of Immigration Practice Group
• Former General Counsel, Immigration and Customs Enforcement
Revised Form I-9 Now Available

– USCIS released a revised version of Form I-9, Employment Eligibility Verification.

– Employers may continue using Form I-9 with a revision date of 03/08/2013 N. through Jan. 21, 2017.

– By Jan. 22, 2017, employers must use the revised form.
Background

- Pew Research Center: An estimated 11.5M unauthorized workers made up an estimated 5.2% of the active workforce in the United States.

- ICE FY ’14 Accomplishments:
  - 362 criminal arrests tied to worksite enforcement investigations.
  - 1,320 Notices of Inspection (Form I-9 Inspections) and 637 Final Orders, totaling $16,206,202.00 in fines assessed.
  - ICE debarred 278 business and individuals for administrative and criminal violations.

- Employers are on the front line of the immigration debate.
Potential Consequences for Employers

Penalties

CRIMINAL PROSECUTIONS
- Felony and Misdemeanor
  - Imprisonment, Fines & Forfeitures

ADMINISTRATIVE SANCTION
- Increased Fines!
  - Hiring Violations
    - $539 - $21,563
- Paperwork Violations
  - $216 - $2,156

DEBARMENT
- Prohibits Federal Contracts 1-3 Years
  - Enacted by Executive Order on 02/13/1996
The New Form I-9: Basic Changes in Section 1

- Embedded Instructions for completing each field
- Requiring employees to provide only other last names used in Section 1, rather than all other names used
- Drop down lists and calendars
Section 1: Employee Information

- The new form contains drop down windows for applicable fields that allow employees to easily select their date of birth and date of hire in Section 1.

- On the new Electronic “Smart Form” I-9, each field contains a button that will open a window with embedded instructions or more detailed explanations of the information required.
Section 1: Attestation

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

1. A citizen of the United States
2. A noncitizen national of the United States (See instructions)
3. A lawful permanent resident (Alien Registration Number/USCIS Number)
4. An alien authorized to work (expiration date, if applicable, month/day/year)

Some aliens may write “N/A” in the expiration date field. (See instructions)

A lawful permanent resident is an individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This term includes conditional residents.

Aliens authorized to work must provide one of the following document numbers to complete Form I-9:

1. Alien Registration Number/USCIS Number
2. Form I-94 Admission Number
3. Foreign Passport Number

Some aliens may write “N/A” in the expiration date field. (See instructions)

- The new features on the “Smart Form” are particularly helpful in the Attestation Portion of Section 1, where small data entry errors and incorrect information are often entered by employees and can be difficult to notice.
The New Electronic Smart Form will not allow employees to enter certain incorrect information. If invalid data is entered into certain fields, an error window will appear that makes it impossible to continue until the issue is resolved. For example, in the picture below, an incomplete Alien Number was entered into Section 1. As you can see, an error window explaining the problem has appeared.
Section 1: Preparer and/or Translator Certification

The final portion of Section 1 is an optional field to be filled out if there is a third party assisting the employee with Section 1 of the I-9. Usually this third party is a translator, but it can also be a parent or guardian if the employee is under 18. The embedded instructions shown above explain if and when this section needs to be completed.
Section 1: Supplement for Additional Preparers/Translators

Supplement For Additional Preparers/Translators

- The new supplement for situations in which multiple preparers and/or translators assist the employee with Section 1 is available online at: [https://www.uscis.gov/i-9](https://www.uscis.gov/i-9)
Section 1: Final Steps

When the user has completed Section 1 and clicked the “Finish” button, the electronic Form runs a check and highlights and incomplete fields. Any empty fields must then be completed before moving on to Section 2. Note that “N/A” must be written into the optional fields by the user, this function is not automated.
The New Form I-9: Basic Changes in Section 2

Drop down lists and calendars

A quick-response matrix barcode, or QR code, generates once the form is printed and can be used to streamline audit processes

Area to enter additional information that employers are currently required to note in the margins of the form
Once Section 1 is completed, the user can continue to Section 2. Note that each page must be printed out and signed manually in order to be considered valid for I9 purposes.

The top portion of Section 2, “Employee Info from Section 1”, automatically updates based on previous data entry.

### Section 2. Employer or Authorized Representative Review and Verification

Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee’s first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the “Lists of Acceptable Documents.”

<table>
<thead>
<tr>
<th>Employee Info from Section 1</th>
<th>Last Name (Family Name)</th>
<th>First Name (Given Name)</th>
<th>M A</th>
<th>Citizenship/Immigration Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marinelli</td>
<td>Michael</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 2: Supporting Documents

- The electronic version of the New I-9 pre-selects a valid list of Supporting Documents based on the Citizenship Status previously selected in the Attestation portion of Section 1.

- In the example pictured here, the documents above the dotted line are valid List A Documents for a Citizen of the U.S. Those below the Line are not.
Section 2 : Supporting Documents

- Drop Down Windows in the “Supporting Documents” Portion of Section 2 ensure that the specific information for each document is correct based on the initial selection.

- For example, the “Issuing Authority” fields pictured on the right only allow the user to select valid issuing authorities for the documents that the employee has elected to use (in this case a Driver’s License and a Social Security Card).

- Previously this was a field where common mistakes included writing “DMV” without specifying a state in the issuing authority for the DL or “U.S. Government” for the SSC. Mistakes like these are no longer possible.
Section 2: Additional Information

• There is a large field for "additional information" in the center of Section 2. The drop down instructions for this field (shown here), explain the options for entering data in this field. It was previously required that this information be written in the margins of the form.
Section 2: Certification

Drop down boxes and embedded instructions again help to clarify what information is necessary for a portion of the I9 that frequently contains errors of omission.

As with Section 1, the Certification Section needs to be printed and signed manually after being completed with the online Form.
The New Form I-9: Section 3

- Section 3’s instructions on Rehires or Reverifications are more detailed and contain additional information on how to complete this difficult section.
Critical Reminders

The revised Form I-9 is not an “electronic I-9” as defined in the DHS regulations.

Employers using this “smart form” will ultimately still need to:

- Print the form.
- Obtain signatures.
- Retain manually.
- Monitor reverifications and updates manually.
- Data-enter information into E-Verify.
Issues with New Form I-9

Incomplete or unclear List A, B, and C documents in drop-downs:

- There is no drop down in List A, B or C to capture the acceptable combination of an expired I-551 with an I-797 showing 2 year conditional permanent resident has been extended for 1 year.

- While a certificate of naturalization is an acceptable List C document, the dropdown doesn’t include these certificates on the list. The user filling out the Form is expected to know that these certificates are categorized as “DHS issued work authorization documents”. This has caused confusion in the past and has not been addressed.

Instructions available to individuals using paper I-9 need to be harmonized with instructions available on online fillable form and with M-274, I-9 Central.

Additional Information block instructions are not clear:

- Specifies “Use this space to notate any additional information required for Form I-9, such as: employee termination dates and dates of retention.”
- Unclear what the basis of this requirement is.
Issues With the New Form I9

While the new electronic version of the Form does catch and force the user to correct many issues, some of which are shown in previous slides, there are a few significant errors that it does not catch. One of the most notable issues is with the Document Number field in Section 2. The field does not flag formatting errors or numbers that don’t match previous selections. While the Document Number field is not always applicable, it is required for many Supporting Documents. Incorrect data entry in this field can be especially troublesome for E-Verify Employers who use those Document numbers for Employee Verification.

<table>
<thead>
<tr>
<th>List A</th>
<th>Identity and Employment Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document Title</td>
<td>Employment Auth. Document (Form I-766)</td>
</tr>
<tr>
<td>Issuing Authority</td>
<td>U.S. Citizenship and Immigration Services</td>
</tr>
<tr>
<td>Document Number</td>
<td>Incorrect</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>11/30/2018</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List B</th>
<th>Identity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document Title</td>
<td>Driver’s license issued by state/territory</td>
</tr>
<tr>
<td>Issuing Authority</td>
<td>Mississippi</td>
</tr>
<tr>
<td>Document Number</td>
<td>Incorrect</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document Title</td>
</tr>
<tr>
<td>Issuing Authority</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List C</th>
<th>Employment Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document Title</td>
<td></td>
</tr>
<tr>
<td>Issuing Authority</td>
<td></td>
</tr>
<tr>
<td>Document Number</td>
<td>1112223333</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>N/A</td>
</tr>
</tbody>
</table>
What’s ahead with a new administration?

- Roll back of executive actions, potentially affecting millions.
- Increasing emphasis on enforcement/compliance.
- Recent regulations are a reminder regarding document abuse / over-documentation (even if you think you are being helpful).
- Further information gathering and sharing.
- Potential restriction of H-1Bs.
Thank You