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The USCIS has submitted an interim final rule that revises Form I-9 and the list of documents that are acceptable to prove identity and employment authorization. Employers will be given a 45-day grace period to begin using the new form. Failing to do so may result in fines.

USCIS Issues Interim Final Rule on I-9 Employment Verification

By Jorge R. Lopez and Chadwick M. Graham

The U.S. Citizenship and Immigration Services (USCIS) announced on December 15, 2008, that it submitted an interim final rule to the Federal Register revising form I-9 used in the employment verification process.

Employers must complete a Form I-9 for all newly hired employees to verify their identity and authorization to work in the United States. The list of approved documents that employees can present to verify their identity and employment authorization is divided into three sections: List A documents verify identity and employment authorization, List B documents verify identity only, and List C documents verify employment authorization only.

Perhaps the biggest change under the new rule is that employers may no longer accept expired documents. This change is intended to reduce the incidence of fraud and document tampering. However, documents such as Social Security cards without expiration dates are still acceptable for I-9 purposes.

There also have been changes to the list of acceptable documents that appears on the back of the Form I-9. The revised Form I-9 adds the new U.S. Passport Card to List A. Two other documents also have 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 (legal permanent residence status confirmation); 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.

A number of documents also have been removed from List A, as they are no longer issued:

1. Form I-688, Temporary Resident Card;

- 2. Form I-688A, Employment Authorization Card; and
- 3. Form I-688B, Employment Authorization Card.

Finally, Section One of the Form I-9 has been amended to include a noncitizen national. A noncitizen national is 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.

Employers must begin using the new Form I-9 for all new hires and re-verifications within 45 days after the final rule is published in the Federal Register. The Final Rule was published on December 17, and employers must begin using the new form no later than February 2, 2009. The USCIS's *Handbook for Employers, Instructions for Completing the Form I-9* will be updated with the new form and instructions for use. Use of the previous June 5, 2007 edition may result in fines. Employers do not need to complete a new Form I-9 for all employees - only for new hires and re-verifications.

Public comments on the new form may be submitted for up to 60 days at: <http://www.regulations.gov>. Comments should be identified by DHS Docket No. USCIS-2008-0001.

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Jorge R. Lopez is a Shareholder in Littler Mendelson's Miami office. Chadwick M. Graham is an Associate in Littler Mendelson's Phoenix office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Lopez at jlopez@littler.com, or Mr. Graham at cgraham@littler.com.