NLBMDA Regulatory Update:
New Form I-9, Employment Eligibility Verification
Required Starting January 22, 2017

Overview

The U.S. Citizenship and Immigration Services (USCIS) published a revised Form I-9, Employment Eligibility Verification, on November 14, 2016. The new form, referenced with its publication date 11/14/2016, will become mandatory on January 22, 2017, replacing the current form dated 03/08/2013. The new form is available in a new “smart” form version or standard PDF form at www.USCIS.gov/I-9. The new form has a planned expiration date of August 31, 2019. According to USCIS, the “changes are designed to reduce errors and enhance form completion using a computer”.

Form I-9 was previously revised on March 8, 2013, to make a number of improvements—notably adding data fields, improving the form’s instructions with popups, and revising the layout, including expanding the form from one page to two pages. Form I-9 (03/08/2013) is a total of nine pages when including the instructions and Lists of Acceptable Documents. The previous form had technically expired on March 31, 2016, but its use was extended as USCIS worked to complete the new revision.

The new Form I-9 (11/14/2016) is three pages long, one page for each section, not including page 4, the Lists of Acceptable Documents. As explained below, in the new smart form version, the instructions for each field are imbedded in each field. There is also a standard 3-page form of the new Form I-9 and a freestanding 15-page set of instructions.

A Spanish language version of the new Form I-9 (11/14/2016) does not include any of the smart features and can only be used in Puerto Rico; however, it may be used as a tool to assist a U.S. employee who is completing the English version.

The version of the new Form I-9 and its instructions are designated at the top right-hand side of each page as “USCIS Form I-9, OMB No. 1615-0047 (Expires 08/31/2019)”. The version of the form, including the Lists of Acceptable Documents and the instructions, are generally referred to as designated in the bottom left-hand footer of each page: “Form I-9 11/14/2016 N”.

What Did Not Change

The basic requirements for using the Form I-9 did not change. All employers must complete and retain the form when making new hires (for every person hired on or after November 6, 1986) in the U.S. as long as the person works for pay or other type of payment.
The same anti-discrimination notice is prominent on the new Form I-9: “It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.”

The employer must ensure that all pages of the instructions and Lists of Acceptable Documents are available, either in print or electronically, to all employees completing the form. With the new smart form version, it is important to note that employers and employees may choose to complete any or all sections of the form on paper or using a computer, or a combination of both.

An independent contractor is not considered an employee for Form I-9 purposes and does not need to complete Form I-9. Also, if your company uses a temporary or a staffing agency to obtain workers, those workers are considered employees of that agency and provide services to your company as independent contractors. The agency, not your company, must complete and retain a Form I-9 for such employees. There are separate rules associated with determining the status of an independent contractor.

Also not changing are the three basic sections of the Form I-9. Section One, Employee Information and Attestation, must be completed by the employee; Section Two, Employer or Authorized Representative, Review and Verification must be completed by employers; and Section Three, Reverification and Rehires, must be completed by employers for employees who are rehired or whose employment authorization requires reverification.

Employers may continue to use E-Verify to supplement Form I-9 and ensure employment eligibility.

**What Changed**

The changes made to Form I-9 (11/14/2016) were intended to reduce errors and enhance completion using a computer. Various sources, including USCIS, highlight a number of the key changes –

- Section 1 asks for “other last names used” rather than “other names used”. This change, requiring only the last name, is intended in part to protect the privacy of transgender and other individuals who have changed their names. This same protocol exists for Section 3 where an employee is being rehired or re-verified.

- Section 1 also clarifies the numbering of immigration status categories.

- In section 1, the employee may select multiple preparers/translators, with a new supplemental attestation for use by each preparer/translator. The new smart form has a
drop-down menu for the number of preparers/translators and automatically adds the appropriate number of attestations.

- Section 2 includes a new “Citizenship/Immigration Status” field, with a pull-down list on the smart form, as an option to writing in the appropriate number corresponding to citizenship/immigration status.

- There is a new dedicated area for including additional information that previously had to be entered in the margins, such as information on unique work-authorization scenarios.

- In Section 3, the employer must now complete the Last Name, First Name and Middle Initial fields as provided by the employee in Section 1.

- The instructions have been separated from the form, consistent with other USCIS forms, with specific instructions for completing each field.

- The new smart form includes prompts to ensure information is entered correctly.

- The smart form is expected to be easier to complete on a computer. It includes drop-down lists and calendars for filling in dates, on-screen instructions for each field, easy access to the full instructions, and error checking capabilities. At this time, the smart form version is only compatible with Adobe Reader.

- When the employer prints the completed smart form, a quick response (“QR”) code is automatically generated, which can be read by most QR readers.

**Using the New Smart Form I-9**

It is important to note that the new smart form is not an electronic form that may be submitted or stored online. Employers using the form to complete with the use of a computer must have Adobe Acrobat Reader and will still need to print the form when completed, secure handwritten signatures, store in a safe place, and monitor reverifications and updates. New information must be retyped into the E-Verify system.

As indicated above, employers and employees may choose to complete any or all sections of the form on paper or using a computer, or a combination of both. Form I-9 found on the USCIS website is not considered electronic and therefore cannot be electronically signed. Regardless of the method used to enter information into each field, you must print a hard copy of the form, then sign and date the hard copy by hand where required.

Penalties for Violations

Employers may be fined if the Form I-9 is not properly completed. Individuals may be prosecuted for knowingly and willfully entering false information on the form. Employers are responsible for retaining completed forms.

On August 1, 2016, USCIS announced significantly higher fines for Form I-9 paperwork violations, increasing from a range of $110-$1,100 to a range of $216-$2,156. Penalties are assessed on a per individual Form I-9. These higher penalties are a result of a federal government-wide adjustment authorized by the Federal Civil Penalties Inflation Adjustment Act of 2015, and may be applied to any violations that occurred after November 2, 2015, the day the President signed the Act into law.

A fact sheet, Form I-9 Inspection Overview (June 26, 2013) provides an overview of the inspection process, which is initiated by receipt of a Notice of Inspection (NOI). It may be found at www.ice.gov/factsheets/i9-inspection. The 2013 fact sheet does not include the most current penalties.

An overview of all civil and criminal penalties associated with Form I-9 and immigration-related employment discrimination violations may be found at www.uscis.gov/i-9-central/penalties.

Please direct any questions or additional information to Frank Moore, NLBMDA Regulatory Counsel at frank@dealer.org.