



In December 2008, the USCIS published an interim rule amending the documents acceptable to establish work eligibility and modifying Form I-9. The new Form I-9, identified by the notation (Rev. 02/02/09)N in the bottom right corner was set to take effect on February 2, 2009. On the Friday before the effective date of the new I-9 Form, the USCIS announced a sixty (60) day delay, until April 3, 2009, to implement the interim rule and re-opened the public comment period on the rule for another thirty (30) days. Until April 3, 2009, employers should continue to use the Form I-9 identified by the notation (Rev. 06/05/07)N. Employers should begin using the new Form on April 3, 2009, unless the government announces another delay.

The new interim rule, entitled *Documents Acceptable for Employment Eligibility Verification*, makes subtle changes to the list of documents acceptable to prove authorization to work in the United States and to the I-9 Form itself. The most significant changes are as follows:

1. All documents presented must be unexpired. The prior rule permitted the submission of an expired U.S. passport and expired List B documents. Page 2 of the new Form I-9 now specifies that all documents must be unexpired.
2. Forms I-688 (Temporary Resident Card) and Forms I-688A and I-688B (Employment Authorization Documents) have been removed from List A. USCIS no longer issues these Forms and has determined that any previously issued I-688, I-688A, and I-688B Forms would have expired.
3. Adds foreign passports containing certain machine readable immigrant visas to List A in addition to a foreign passport containing a temporary I-551 stamp. The change reflects the Department of State practice of affixing machine readable immigrant visas containing a pre-printed temporary I-551 notation in the foreign passports of aliens immigrating to the U.S. as permanent residents.
4. Adds to List A passports from the Federated States of Micronesia or the Republic of the Marshall Islands with a Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and Micronesia and the Marshall Islands. Pursuant to the Compact, most citizens of Micronesia and the Marshall Islands may be admitted to the U.S. as nonimmigrants with authorization to work. These individuals, may, but do not need to obtain an Employment Authorization Document to work.
5. Section 1 of the new Form I-9 separates into two categories "A citizen of the United States" and "A noncitizen national of the United States." Noncitizen nationals of the U.S. are persons born in America Samoa, certain former citizens of the former Trust Territory of the Pacific Islands who relinquished their U.S. citizenship, and certain children of noncitizen nationals born abroad.

On March 11, 2009, the USCIS published a correction to the interim rule, which will have the effect of providing employer-specific work authorization for certain aliens lawfully enlisted into the U.S. Armed Forces. The change adds the military identification card to List A but only for use by the Armed Forces to verify the employment authorization of lawfully enlisted aliens. It is unclear whether the USCIS will make any more changes to the Form I-9 as a result of the additional thirty (30) day comment period. Employers should monitor announcements on the USCIS website, www.uscis.gov.

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