

I-9 COMPLIANCE GUIDANCE

We recommend streamlining employer's I-9 procedures by following these steps:

1. The employer should perform its employment eligibility verification and I-9 procedures on the start date of employment and review documents establishing employment eligibility (i.e., one document from List A on the back of Form I-9 OR one document from List B and one document from List C) within three (3) days from the employment commencement date. Late completion of Forms I-9 should mitigate, but may not eliminate penalties that may be assessed against employer for non-compliance with the Form I-9 completion timelines as required by law.
2. A new hire should be asked to complete Section 1 of Form I-9 and present **either** one (1) document from List A printed on the back of Form I-9, **or** one (1) document from List B **and** one (1) document from List C. Employer's representative should review the I-9 verification document(s) and complete Section 2 as well as the employer's certification block. The employer's representative **should not** request specific documents for review (e.g., Social Security Card), but should review the documents chosen by the new hire and judge the documents' **facial validity** only.
3. Facial validity of the documents should be established through the use of the Employer Handbook (copy provided for your convenience). If the new hire chooses to present his Social Security Card as one of the employment verification documents, the employer should use the Handbook and the following guidance from the Office of the INS's General Counsel and the SSA:

A valid SSN must have a total of nine digits. The first three digits are referred to as the area, the next two as the group, and the last four as the serial. No SSNs with a 000 area number, or an area number in the 800 or 900 series, have been issued. Also, no SSNs with a 00 group or 0000 serial number have been issued.¹

4. If a new hire chooses to not present his/her Social Security Card as one of the employment verification documents, the new hire's choice should be respected so long as the documents presented are facially valid. The employer may need to obtain each worker's SSN for purposes unrelated to employment verification (e.g., tax and other withholdings). The employer should establish a process whereby each new hire is required to present his/her Social Security Card for

¹ INS General Counsel Discusses Important Social Security Compliance Issues for I-9 Purposes, 75 Interpreter Releases, at 203 and Appendix V (February 9, 1998).

these purposes separate from the I-9 context. That is, a new hire should be advised regarding the purpose for presenting the Social Security Card (i.e., for accounting or payroll records only). The non-employment verification purpose of the requirement to present a Social Security Card should be made clear to each worker. No SSN validity verification (i.e., no copying and no contacting the SSA) should occur when a Social Security Card is presented for accounting or payroll purposes.

5. The employer should decide whether it is going to copy documents presented by new hires to complete Section 2 of the I-9, for the I-9 files. Once the policy is established, the employer should strictly adhere to it and not make any exceptions (i.e., either copy I-9 documents for every employee or for none of the employees). If the employer makes changes to its policy (i.e., chooses to initiate or to discontinue copying), it should place a memorandum in each employee's I-9 file and the company's corporate and HR files stating the policy change. The employer should not destroy documents already in I-9 files. NOTE: if the employer chooses to copy documents for I-9 files, it should ensure that copies made and retained in files are clear and legible.
6. If the employer has particular concerns about unauthorized employment and believes that a significant number of its job applicants may be unauthorized workers with false documents and wants additional safeguards, the employer may wish to consider signing up for the U.S. Citizenship and Immigration Services' ("USCIS") Employment Verification Pilot Program. The Pilot Program provides for an opportunity to verify employment eligibility through accessing information in the government's Alien Status Verification Index (ASVI) database with over 60 million records. Upon signing up for the Pilot Program, the employer would receive software, a manual, notices, and a computer-based tutorial from the USCIS. While costs of participation in the Pilot Program are low, participation does obligate the employer to run each new hire's information through the Pilot Program, which may become burdensome for the company. We recommend that the employer consult its immigration legal counsel to discuss advantages and disadvantages of Pilot Program participation.
7. The employer should regularly perform internal I-9 audits, especially after a hiring boom. An employee should correct any deficiencies in Section 1 of Form I-9, and the employer's representative should correct any deficiencies in Sections 2 and 3 (when applicable). Forms I-9 and/or corrections therein should never be backdated and white-out should not be used on Forms I-9. Rather, incorrect information should be lined through. Each change made to a Form I-9 should be initialed and dated by the person making the change, and the date indicated should be the actual date of correction. If the employer fails to complete an I-9 Form for an employee within three (3) days of hire, it should complete the I-9 Form as soon as possible thereafter and indicate the actual Form I-9 completion date in Section 2 of the form.

8. Employer should timely re-verify employment authorizing (but not identity establishing) documents. Permanent Resident Cards with a 10-year validity period should not be re-verified upon expiration. Re-verification should be performed in Section 3 of Form I-9. If multiple re-verifications are required (e.g., several extensions of temporary employment authorization or several instances of the employee's re-hire by same employer), a new Form I-9 should be completed and kept in the I-9 file on top of any previously completed Forms I-9.
9. Employer should retain Forms I-9 for all current employees. However, employer is not required to prepare Form I-9 for any employee who was hired by the employer prior to November 6, 1986. For any terminated employee, employer should keep Form I-9 for three (3) years from the date of hire OR for one (1) year from the employee's termination date, WHICHEVER COMES LATER.