



60 Day Comment Period on Proposed Changes to Form I-9 Ended on January 25, 2016

Insights

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On November 24, 2015, the U.S. Citizenship and Immigration Services (USCIS) published a 60 day notice of proposed changes to the Form I-9 in the Federal Register. The 60 day public comment period ended on January 25, 2016.

The purpose behind the proposed changes is an attempt by USCIS to create a “smart” version of the I-9 to reduce user error and make the form easier to complete. The proposed changes include new drop-down menus, field checks and real-time error messages to ensure data integrity by employers completing the I-9 form.

New functionality of the new “smart” I-9 includes the following:

- Performs logic and data validation tests on various fields to ensure information is entered correctly. For example, the form will confirm that the appropriate number of digits for a social security number or an expiration date field are entered by the user.
- Allows users to read instructions for specific field on the screen as they are typing. Various “Help” buttons will be available to assist the user with common questions.
- Allows users to enter additional important information in certain fields rather than requiring them to enter notes manually by hand in the margins of the form.
- Limits users to choose documents from drop-down menus that include lists of acceptable identification documents.
- Expands the information section regarding multiple preparers and translators.
- Clarifies that employees completing Section 1 provide only “other last names used” rather “other names used.”
- Modifies section 1 to request that the employee enter their Form I-94 number or foreign passport information, rather than both.
- Separates the instructions from the form. However, employers are still required to present the instructions to the employee completing the form.
- Generates a quick-response matrix barcode, or QR code, upon printing the form. It is expected that the barcode will be used to facilitate review by government auditors.

The proposed “smart” I-9 is not an electronic I-9 as defined by USCIS regulations. Rather, it incorporates the latest form-filling functionality to allow users to generate a more accurate and error-free I-9. The employer using the new I-9 must still print the I-9 in hard copy, obtain the appropriate handwritten signatures, retain the I-9 as required by law, and track reverification dates. If the employer is a member of E-Verify, the employer will also need to enter relevant information taken from the I-9 into E-Verify.

As the 60 day comment period has ended, USCIS may make changes based on comments received and must publish a second notice for comment. The public will then have an additional 30 day period to provide comment on the proposed changes before the changes become effective. The form will be available for download at www.uscis.gov upon being approved.

We will keep clients apprised of any changes regarding Form I-9 and the accompanying regulatory requirements. If you have any questions about your obligations as an employer, please contact your Fisher Phillips legal representative for assistance.