



USCIS Allows Additional 30-Day Comment Period on Proposed Changes to Form I-9, Employers Must Continue Using Form I-9 with March 31, 2016 Expiration Date Until New Form Available

Insights

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On Monday, March 28, 2016, the U.S. Citizenship and Immigration Services (USCIS) published notice in the Federal Register to allow an additional 30 days for public comment on its proposed changes to Form I-9, Employment Eligibility Verification. The public has until April 27, 2016 to provide any additional comments.

The prior 60-day comment period ended on January 25, 2016. USCIS stated that it received comments from 133 commenters in connection with the 60-day notice. USCIS provided no reason for adding additional time other than “to allow an additional 30 days for public comments.”

The purpose behind the proposed changes is to create a “smart” version of the I-9 to reduce user error. The proposed changes include drop-down menus, field checks and real-time error messages to ensure data integrity. Any revised Form I-9 is not considered an “electronic” I-9 as defined by USCIS regulation. Rather, the new form-filling functionality allows users to generate a more accurate and error-free I-9 form by utilizing available technology. Employers will still print the Form I-9 in hard copy, obtain the appropriate handwritten signatures, retain the form 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 Form I-9 into E-Verify.

In response to the public comments received during the 60-day notice, USCIS has made further improvements to the proposed form. These changes include the following:

- Validations on certain fields to ensure information is entered correctly
- Additional spaces to enter multiple preparers and translators
- Drop-down lists and calendars
- Embedded instructions for completing each field
- Buttons that will allow users to access the instructions electronically, print the form, and clear the form to start over
- A dedicated area to enter additional information that employers are currently required to notate in the margins of the form

- A quick-response matrix barcode, or QR code, generates once the form is printed and can be used to streamline audit processes
- Requiring employees to provide only other last names used in Section 1, rather than all other names used
- Removing the requirement that aliens authorized to work must provide both their Form I-94 number and foreign passport information in Section 1
- Separating instructions from the form, in keeping with USCIS practice
- Adding a Supplement in cases where more than one preparer or translator is used to complete Section 1

After the 30-day comment period and public comments are considered, USCIS may make further changes which the Office of Management and Budget (OMB) will need to review and approve. Employers must continue to use the current version of Form I-9 with an expiration date of March 31, 2016, until the OMB approves the proposed version and USCIS posts it on its website.

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.