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USCIS Redesigns Employment Authorization Document – I-9 Effect

On October 25, 2011, Director of United States Citizenship and Immigration Services (USCIS) Alejandro Mayorkas announced the release of a redesigned Employment Authorization Document (EAD or Form I-766) and a redesigned N-560 Certificate of Citizenship. The new documents will be issued on an ongoing basis, beginning, respectively, on October 25 and October 30. Both documents have been redesigned to contain enhanced security features aimed at combating document fraud and discouraging tampering. USCIS estimates that more than one million people will be issued these new documents in the next year.

What do employers and Human Resources professionals charged with completing the I-9 process for new hires, rehires, and re-verification for existing employees, need to know about these new documents? How does the redesign effects the I-9 processing of your workforce? This *GT Alert* will focus primarily on the redesigned EAD, since the N-560 Certificate of Citizenship is no longer an acceptable document for Form I-9 purposes.

I-9 Background Refresher

U.S. Immigration law requires that an employer verify the identity and U.S. employment eligibility of its workforce by completing and retaining a Form I-9 Employment Eligibility Verification for every employee within three (3) business days of the day the employee begins working for pay. The I-9 process requires the employee to present a document or documents to the employer that verify both identity and the authorization to work in the U.S.

The Form I-9 contains a List of Acceptable Documents, subdivided into three lists, titled “List A,” “List B” and “List C.” The presenting individual must submit to the employer **either**:

- one “List A” document (one that establishes both identity and authorization to work in the U.S., such as a U.S. passport or the legal permanent resident or “green” card) **or**,
- one “List B” document (a document that establishes identity, such as a U.S. state-issued driver’s license or a U.S. military card), **and** one “List C” document (a document that establishes work authorization, such as an original or certified copy of a U.S. birth certificate).

The EAD or work permit (Form I-766) containing a photograph is classified as a “List A” document that establishes both identity and work authorization. The N-560 Certificate of Citizenship was removed from List “A” in November of 2007 and is no longer an acceptable document for I-9 purposes. If you have inadvertently accepted a Certificate of Citizenship as a “List A” document after that date, the employee should be contacted to bring in alternative documents to satisfy the current I-9 requirements.

The Redesigned EAD

The new EAD contains a variety of redesigned security features, such as a holographic image on the front of the card and optically variable ink along the top of the card. However, perhaps the most noteworthy feature for I-9 purposes is the placement of the Alien Registration Number. EADs issued prior to October 25, 2011, listed the number **beside** the notation “A#” on the front of the cards. These numbers will now be listed **under** the notation “USCIS#” on the front of the card and will no longer have the letter “A” before it.

In light of all of the additional security features on the new EAD, it is likely that document vendors will focus their efforts on attempts to replicate the older version of the card for the time being.

The Redesigned Certificate of Citizenship

The I-560 Certificate of Citizenships issued on or after October 30, 2011, will also contain enhanced security features, such as a background of multi-color ink and a watermark within the paper, and will now be run through a printing process designed to be more fraud and tamper resistant. Individuals who possess this document may note that USCIS has stated that the older versions of the certificate will remain valid indefinitely. **As noted above, however, this document is not currently acceptable for I-9 purposes, as USCIS removed it from the I-9 List of Acceptable Documents in November of 2007.** Whether it will be re-added to the List “A” grouping of acceptable documents given its redesign of enhanced security features will remain to be seen in future Form I-9 revisions.

Given the redesign of the EAD card, will we now need to reject previous versions of the card if presented by an employee or new hire during the I-9 process?

No. An otherwise valid EAD containing a photograph that was issued prior to this latest redesign will still be an acceptable “List A” document as long as the date of expiration printed on the card remains unexpired at the time it is presented to the employer. Keep in mind that an individual has the right to choose which document(s) to present to the employer from the I-9 List of Acceptable Documents. An employer may **not** specify which of the documents from the list it prefers or will accept – any combination as specified on the List of Acceptable Documents is permissible, as long as the documents are valid and unexpired.

It also bears noting that an employee with one of the previously issued EADs may not apply for a new EAD until within three months of the expiration date of the current EAD.. USCIS will issue the new cards on a forward-going basis as individuals apply for renewals and/or replacements. Individuals are not, however, required to apply for replacement cards in order to obtain the redesigned cards and employers may not mandate that they do so.

Now that the EAD card has been redesigned, do we need to re-verify everyone who previously presented an older version of the EAD?

No. An employee's employment authorization needs to be re-verified only when the employment authorization that was previously presented expires. Generally, such individuals will have noted their citizenship status as "Alien authorized to work" in Section 1 of the form. An employee who presented an EAD that was valid and unexpired at the time of his or her I-9 completion will not need to be re-verified until the time arrives when that document is expiring. Generally, we recommend that reminders sent to employees well in advance of such expiration dates.

What number should be recorded on the Form I-9 in the "Document #" space?

The EAD "Card #" should be recorded as the "Document #" under Section 2 of the Form I-9, or, if re-verifying an employee, Section 3 of the Form I-9. The card number is a 13 digit combination of letters and numbers that begins with the abbreviation of the USCIS Service Center where the underlying application that led to the issuance of the card was processed ("EAC," "SRC," "WAC," "MSC," or "LIN"). In the past, there was confusion over whether the card number or the Alien Registration Number or A Number should be recorded. The USCIS has now clarified the card number should be used.

As HR professionals or employers examining a redesigned EAD for authenticity, do we need to make sure that all of the security features are present to make the determination?

As with examining any document for I-9 purposes, you are only required to determine whether the document reasonably appears *on its face* to be valid and belonging to the individual presenting it. If both determinations are made in the affirmative, you must accept the document or face possible issues of unfair employment discrimination. You are not required to analyze a document to verify for the presence of every security feature, and in fact, some may not be detectable to the naked eye. On the other hand, it is worth noting that HR managers and those charged with the I-9 compliance process are expected to have basic training in I-9 completion, including fraudulent document review.

A best practice offered by USCIS is that employers use E-Verify, the Internet-based system developed and operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify allows businesses to determine the work eligibility of their employees or new hires to work in the United States by running the information provided to them by the individuals in the I-9 process through governmental databases that check the information against millions of government records. In the majority of cases, the system will either provide the employer with a confirmation that the employee is eligible to work or notify the employer of a tentative no-match within seconds of the employer submitting the information through E-Verify.

Moving Forward

The government continues to hold employers accountable for the hiring and ongoing employment of unauthorized workers. Both government agencies and private entities are increasingly placing companies “on notice” about issues existing with the “no-match” of names and Social Security numbers of individual employees. Businesses are thus being forced to take proactive steps to ensure the legitimacy of their work force. With the risk of crippling civil and criminal penalties, it is more critical than ever for employers to ensure that their employees are who they say they are and that the documents they present in the I-9 process are authentic.

As both the federal and state governments continue working to increase and enhance national security efforts and combat identity theft and document fraud, we can expect to see an ongoing variety of government-issued documents emerge in redesigned, security-enhanced formats that incorporate the latest available forensic science and technology, as was the case with the issuance of enhanced legal permanent resident or “green” cards by USCIS beginning in May of 2010. Employers need to be aware of changes made to documents that fall under the “List of Acceptable Documents” for I-9 purposes so that they can continue to make reasonable determinations as to whether or not to accept the documents at the time they are presented and thus do everything they can to ensure a legal workforce that is hired and processed through the company’s I-9 program in an accurate, fully compliant, and non-discriminatory manner.

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[Greenberg Traurig's Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers' responsibilities when faced traditional no-match situations as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

**For more insight into immigration compliance issues, please visit
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