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# u.s. citizenship & immigration services delay implementation of revised form i-9 employment eligibility verification form

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*MSK Client Alert*

February 2009

The U.S. Citizenship and Immigration Services (USCIS) has announced that it is delaying the implementation of its revised Employment Eligibility Verification Form I-9. Originally scheduled for mandatory use on February 2, 2009, the new form's effective date is now April 3, 2009. The USCIS had received a number of requests to delay the implementation of the new form, as some had commented that the revisions to the form were inadequate in that they did not provide guidance to employers in documenting the employment eligibility of certain classes of employees. Most notably, however, the early implementation of the new form and related regulations was in contradiction to the Obama Administration's expressly stated policy that all regulations promulgated during the waning days of the previous administration be subject to high-level review. In announcing the delay, the USCIS is holding open the period of public comment to the revisions to March 4, 2009; it is thus possible that the form may be revised yet again in the near future.

All U.S. employers are required to complete a Form I-9 for each new hire in order to document authorization to work in the U.S. The new Form I-9 has been revised primarily to require that an employee provide **unexpired, valid documents**. This change is an antifraud measure, and is predicated on the belief that more recently issued documents will far more likely contain up-to-date security features that make them less vulnerable to counterfeiting. Among other changes, it also updates the list of allowable items to include new forms of documentation not in existence when the list was last updated, and deletes forms which are no longer in existence. It also makes technical corrections as to some of the nomenclature on the forms, so as to conform to current usage.

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IMPORTANT NOTE: Employers should not apply the new rule or use the new revised Form I-9 until the new regulation takes effect.

Specifically, the new form contains the following revisions (over and above removing expired versions of the listed documents):

### 1. Documents added to List A:

The revised Form I-9 adds four (4) documents to List A of the acceptable documents, as follows:

- U.S. Passport Card
- Foreign passport that contains a temporary I-551 stamp OR temporary I-551 printed notation on a machine-readable immigrant visa
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations on the form
- Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating non-immigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

### 2. Removal of Acceptable Documents From List A:

The revised Form I-9 removes Employment Authorization Documents Form I-688, I-688A, I-688B for Temporary Residents, as these forms are no longer issued.