



ICE AND USCIS—GOING GREEN?

ICE Gives Guidance Regarding the Electronic Storage of I-9 Forms

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) issued a final rule that provides that you may sign Form I-9 electronically and retain the form in an electronic format. All employers are required to complete I-9s to verify employment eligibility. The rule, which takes effect August 23, 2010, applies to employers who choose to execute and/or store the forms electronically. The final rule makes minor changes to an interim rule from 2006 and covers only the **storage** of I-9s, not their content. The rule was issued in response to comments received from trade associations, agencies, and organizations involved in human resource management. It ultimately does not result in any critical changes to the standards that were established in 2006. The rule clarifies several issues, each discussed below.

- You must complete an I-9 within three business— not calendar—days of the date an employee is hired.
- You may use paper, electronic systems, or a combination of paper and electronic systems. Additionally, guidance is given on storage of ancillary documents used to verify an employee's identity and eligibility to work in the U.S. Under the federal law, you may, but are not required to, copy or make an electronic image of such documents, but be sure to apply consistent policies and procedures for all employees to avoid discrimination claims. State law regarding the retention of supporting documents may vary. Lastly, only the pages of the I-9 containing employer and employee-entered data need be retained. The other pages are instructions and need not be retained.
- You may change electronic storage systems as long as the systems meet the performance requirements of the regulations.
- You are not required to retain audit trails each time an I-9 is viewed electronically, only when the I-9 form is created, completed, updated, modified, altered, or corrected. A secure and permanent record should be created of the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.
- You may provide or transmit a confirmation of an I-9 transaction, but are not required to do so unless the employee requests a copy. The confirmation does not have to be given at the time of the transaction, but must be given within a reasonable period of time.

Remember, I-9s must be retained and made available for inspection by ICE investigators, if requested. You are required to keep a Form I-9 for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever date is later. This means you should have an I-9 on file for every current employee hired after November 6, 1986.

If you have any questions or concerns regarding completion, retention, or storage of I-9s, you should consult your attorney.



USCIS Begins Issuing Newly Designed Green Cards

To further its ongoing efforts to deter immigration fraud, U.S. Citizenship and Immigration Services (USCIS) began issuing a newly designed Permanent Resident Card on May 11, 2010. The new card, which is commonly referred to as a “green card,” is now actually green. The card was redesigned with state-of-the-art technology that prevents counterfeiting, obstructs tampering, and facilitates quick and accurate authentication. Some of the new security features include:

- special ink that creates color shifts in visual designs;
- an embedded Radio Frequency Identification Device (RFID), which allows inspectors to read a unique serial number from a distance and link the information to the personal data on file;
- a laser engraved fingerprint;
- micro-image, high resolution pictures of the state flags and U.S. presidents; and
- card materials that resist tampering, making attempted tampering immediately visible to the naked eye.

Many of the features have been implemented to make it more difficult to alter the card if stolen. The cards also now have a preprinted return address to facilitate the easy return of a lost card to USCIS.

You should be familiar with the new version because a green card is proof of authorization to live and work in the U.S. on a permanent basis, so your employees may present the new card for Form 1-9 and/or E-Verify purposes. Anyone newly approved for lawful permanent residency will receive the redesigned card, along with those who renew or replace an expired green card. There are also some green cards out there that do not have an expiration date, and while USCIS is recommending that people with these cards apply for a replacement, it is not required. The bottom line for employers: you could see several different versions of the green card out there for some time.

—[*Laurie M. Chess*](#), [*Mary Ellen B. Jordan*](#), and [*Mary Margaret Spell*](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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