

**New Labor & Immigration  
Concerns for Golf Facilities: I-9  
audits, Mandatory E-Verify, SS  
No Match Letters and H2B Visa  
Compliance**



Presented by Laura Reiff

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# The I-9 Balancing Act



Compliance vs. Anti Discrimination

# The Immigration Reform & Control Act of 1986

- Established an employment eligibility verification requirement utilizing the Form I-9 to collect data on all new hires
- Established an anti-discrimination provision designed to keep employers from discriminating against people because of a foreign accent, national origin, or the fact they don't look "American;" employers may also not commit "document abuse" by requiring more or different documents in a way that discriminates

# Permanent Resident Card



- Alien Registration Number
- Expiration
- Coding that matches the number Expiration of card, not Status
- Document Number vs. A Number



# Permanent Resident Cards

## 1997 Revision

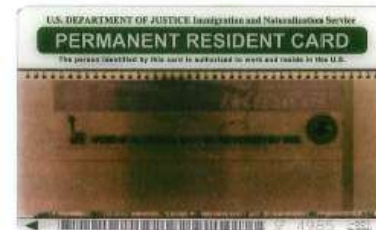
- Laser-engraved photograph (should not be raised)
- Hologram
- Optical memory strip on back of card containing individual's photograph and card information

## 2004 Revision

- INS becomes DHS
- Photographs change from 3/4 view to full-facial view on September 1, 2004



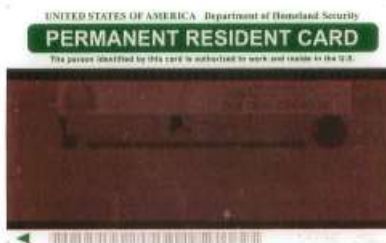
Form I-551 (1997)



Reverse



Form I-551 (2004)



Reverse

# Employment Authorization Document (EAD)

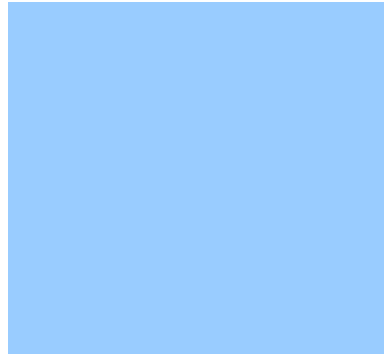
- Previous versions of card will turn red when light is shined through them from below
- Seal with off-center circle comprised of agency text
- Hologram
- Fingerprinting and signature may be waived depending on source of work authorization



Previous Version



Current Version



**Form I-9**



# Who Must Complete an I-9?

- All employees hired after November 6, 1986
- Re-hired employees, if the original I-9 is beyond the retention date or otherwise unavailable

## **Simple, yet the devil IS in the details**

- The I-9 process is designed to assure that we do not knowingly hire workers who are ineligible to work in the United States
- Clearly document that Fresh Direct does everything required in a responsible and conscientious manner to verify:
  - That **EVERY** employee is who he/she says he/she is **AND**
  - That **EVERY** employee is eligible to work in the United States

# By When Must the I-9 Be Completed?

- Section 1 is to be completed by the employee at the time employment begins (Day 1)
- Section 2 must be completed by the employer by the 3<sup>rd</sup> business day after I-9 (Thursday Rule)
- Section 3 must be completed before a person's EAD expires or at the time an update becomes necessary. This is governed by the expiration date entered when the employee marks attestation box 3.

# Basic Rules

- Employee should ***always*** be given the choice of what documentation to present
- You cannot ask to see specific immigration documentation
- Do not over document
  - One List A document
  - Or one from List B and C
- Must be completed **after** employee is hired, no prescreening

# Section 1 of the I-9

OMB No. 1615-0047; Expires 08/31/12

Department of Homeland Security  
U.S. Citizenship and Immigration Services

## Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

### Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address <i>(Street Name and Number)</i>		Apt. #	Date of Birth <i>(month/day/year)</i>
City	State	Zip Code	Social Security #

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) \_\_\_\_\_
- An alien authorized to work (Alien # or Admission #) \_\_\_\_\_ until (expiration date, if applicable - month/day/year)

Employee's Signature

Date *(month/day/year)*

**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature	Print Name	
Address <i>(Street Name and Number, City, State, Zip Code)</i>		Date <i>(month/day/year)</i>

# Section 1 Problem Areas

The last two of the three boxes:

- A \_\_\_\_\_ means the number on the Alien Registration Card or EAD card - you may never see this card and you cannot ask to see it
- Alien Authorized to work until \_\_\_/\_\_\_/\_\_\_ = expiration date of work permission
- Alien # or Admission # \_\_\_\_\_ = the document identification number either on the EAD card or on the 1-94 card
- Make sure the employee signs and dates the form. If not, employer assumes liability for false statements in Section 1

# Section 1 problem areas cont'd

- Documentation does not need to be provided to complete section 1; you cannot ask to see any specific document
- All fields must be completed legibly
- Do not include PO Boxes for the address, include city and state and in the right places
- Date of Birth needs to be complete
- Should be completed in their own handwriting; if someone else is completing, he/she must complete the preparer/translator section

# Section 1 – Who does what?

Employer's role in Section 1 is to review the entries and fields for completeness. Do not request to view documents used to complete the attestation box.

- A preparer/translator should only be used when the employee is unable to complete Section 1 on his/her own
- The employee must still sign Section 1 **personally** even if a prepare/translator is used
- Do not forget to have the employee complete the Attestation box that "*attest, under penalty of perjury*" (the person's basis for being able to work in the U.S)

# Section 2 of the I-9

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____	OR	_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date <i>(if any)</i> : _____		_____		_____
Document #: _____		_____		_____
Expiration Date <i>(if any)</i> : _____				_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address <i>(Street Name and Number, City, State, Zip Code)</i>		Date <i>(month/day/year)</i>



## Section 2 – Who does what?

- You take the documents from the Employee
- You complete the form in front of Employee
- You copy the documents (back and front) but work off the originals
- You make sure that you have the correct ORIGINAL documents
- You ensure that you establish the identity of the Employee
- Verify employment eligibility by reviewing the authenticity of the documents

# List A Documents on the I-9 – (Establish both Identity & work authorization)

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	<u>AND</u>	List C
Document title: <u>Perm. Res. Card</u>	OR	_____		_____
Issuing authority: <u>DHS</u>		_____		_____
Document #: <u>A095347668</u>		_____		_____
Expiration Date (if any): <u>10/01/2015</u>		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____				

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address <i>(Street Name and Number, City, State, Zip Code)</i>		Date <i>(month/day/year)</i>

# List B and C Documents

List B Documents on the 1-9 —

(Establish only Identity)

List C Documents

(Establish employment authorization only)

# Section 2 List B and C

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____	OR	Driver's License _____		Social Security Card _____
Issuing authority: _____		Arizona MVD _____		SSA _____
Document #: _____		T48-54-5222 _____		054-66-9983 _____
Expiration Date (if any): _____		04/28/2012 _____		_____
Document #: _____				
Expiration Date (if any): _____				

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

# And the other Documents?

## LIST OF ACCEPTABLE DOCUMENTS FOR FORM I-9 All documents must be unexpired unless otherwise noted

LIST A	OR	LIST B	AND	LIST C
Documents that Establish Both Identity and Employment Authorization		Documents that Establish Identity		Documents that Establish Employment Authorization
U.S. Passport or U.S. Passport Card		Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address.		Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
Permanent Resident Card or Alien Registration Receipt Card (Form I-551)				
Foreign passport containing temporary I-551 stamp				
Foreign passport containing machine-readable immigrant visa				
Unexpired Employment Authorization Document (EAD) that contains a photograph (Form I-766)		ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		Certificate of Birth Abroad issued by the Department of State (Form FS-545)
The arrival portion of the Form I-94 or I-94A containing a Temporary I-551 stamp and photograph				
<i>E-Verify: Record as I-94 with expiration date of the stamp, or if no expiration date, 1 year from date of issue.</i>				
Expired EAD that contains a photograph (Form I-766) automatically extended by Federal Register Notice				
<i>E-Verify: Record as EAD with Federal Register Expiration Date</i>		School ID card with a photograph		Certification of Report of Birth issued by the Department of State (Form DS-1350)
Expired EAD for Optional Practical Training (OPT) with H-1B receipt notice and endorsed I-20		Voter's registration card		Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
<i>E-Verify: Record as EAD with expiration date of September 30 of current year, if no receipt notice is presented use expiration date of I-20</i>		U.S. military card or draft record		
Expired EAD for Optional Practical Training (OPT) with		Military dependent's ID card		

  Reverify upon end of receipt period    
   Reverify upon expiration date of document    
   Only accept from individuals under 18

STEM extension receipt notice and endorsed I-20	Driver's license issued by Canadian government authority	Native American tribal document
<i>E-Verify: Record as EAD with expiration date of September 30 of current year, if no receipt notice is presented use expiration date of I-20</i>		
Foreign passport with unexpired endorsed Form I-94 or I-94A bearing same name as passport and containing an unexpired endorsement of the alien's nonimmigrant status	Receipt for a replacement of a lost, stolen or damaged List B document	U.S. Citizen ID Card (Form I-197)
	<i>E-Verify: Record as proper List B document with expiration date of 30 days from date of hire (or date of employment authorization expiration for reverification)</i>	Identification Card for Use of Resident Citizen in the United States (Form I-179)
Foreign passport with expired endorsed Form I-94 or I-94A with receipt for extension of non-immigrant visa		
<i>E-Verify: Record as foreign passport and I-94 with expiration date of 240 days from date of I-94 expiration</i>		Expired Permanent Resident Card and Form I-797 "Notice of Action" from USCIS stating that card has been extended for 1 year
Passport from the Federated States of Micronesia FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or I-94a indicating admission under the Compact of Free Association	<b>For persons under age 18 who are unable to present a document listed above:</b>	<i>E-Verify: Record as Perm Res Card with expiration date of 1 year from date of card's expiration</i>
	School record or report card	A valid Form I-94 or I-94A with an asylee approval stamp stating "asylum," "granted indefinitely," or the appropriate provision of law (274a.12(a)(5) or INA 208
The departure portion of Form I-94 or I-94A with an unexpired refugee admission stamp		<i>E-Verify: Record as I-94 Card with No expiration date.</i>
<i>E-Verify: Record as foreign passport and I-94 with expiration date of 90 days from date of hire or, for reverification, the date employment authorization expires</i>	Clinic, doctor or hospital record	Receipt for a replacement of a lost, stolen or damaged List C document
Receipt for a replacement of a lost, stolen or damaged List A document	Day-care or nursery school record	<i>E-Verify: Record as proper List C document with expiration date of 90 days from date of hire (or date of employment authorization expiration for reverification)</i>
<i>E-Verify: Record as proper List A document with expiration date of 90 days from date of hire (or date of employment authorization expiration for reverification)</i>		

Please see M-274 for additional details including what documents must be presented after receipts are accepted.

  Reverify upon end of receipt period    
   Reverify upon expiration date of document    
   Only accept from individuals under 18

# Reviewing the Documents

- If documents appear to be genuine, you must accept them, unless you have knowledge to the contrary
- However, if you have knowledge that they are not legitimate, you should not accept them
- Does the card look tampered with?
- Is something spelled wrong on the document, like United States?
- YOU ARE NOT A DOCUMENT POLICEMAN but must employ the reasonable person standard

# Use your training materials

1. Guide to Identity Documents
2. The New M-274
3. USCIS FAQs
4. Common sense and others

# Copying supporting documentation

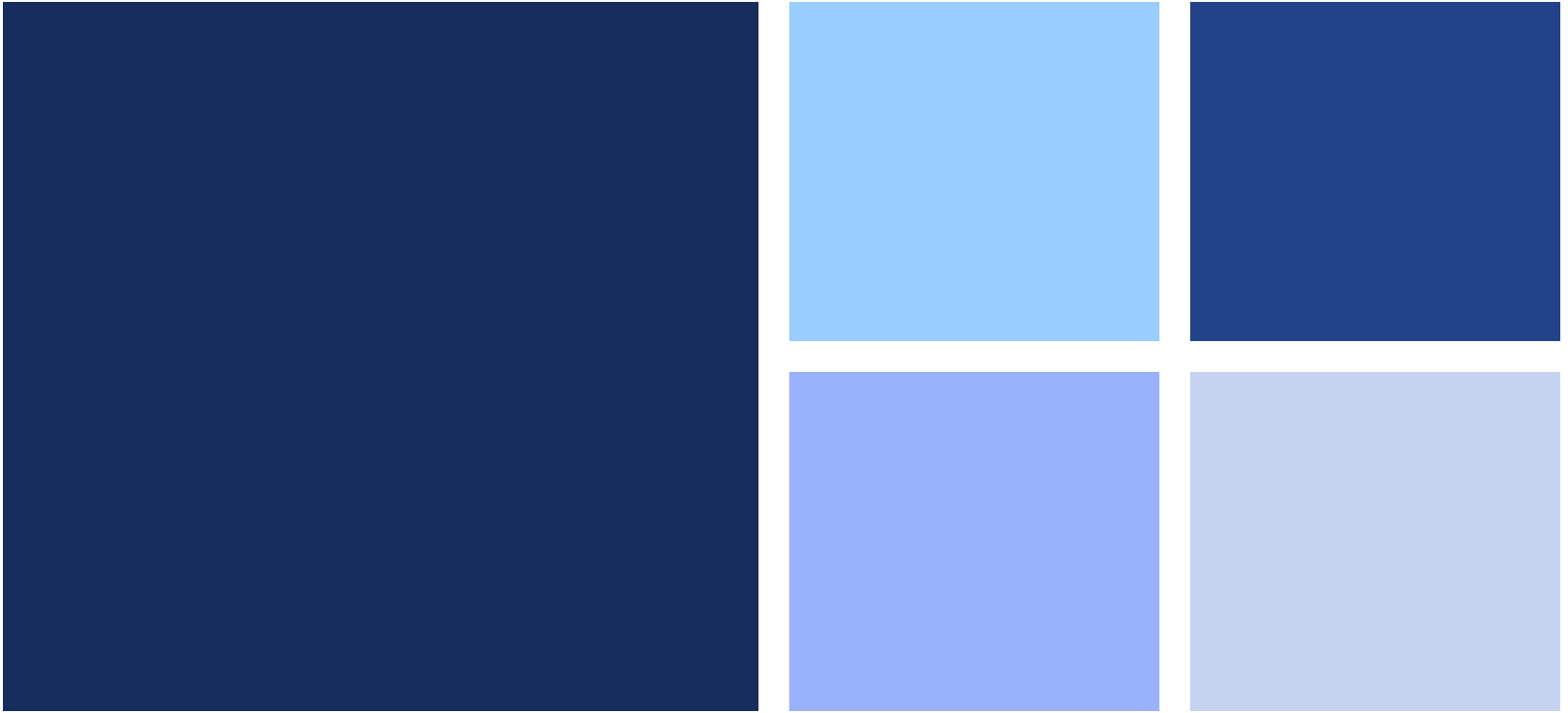
- Copy the documentation presented and examined during the I-9 process
- Copies (back and front) must be made of documents presented by each employee and stapled to the 1-9 along with the E-Verify Query
- NOT REQUIRED BUT RECOMMENDED
- Reduces Substantive Fines to Technical violations



# The Receipt Rule

## Receipt Rule

- You may NOT accept a "Receipt Notice" from USCIS confirming the filing of a Employment authorization document or the extension of same
- DHS regulations only permit an employer to accept an application receipt for:
  - A replacement Alien Registration Receipt Card
  - A replacement Social Security Account Card
- If you receive such a receipt, record the identification number and make a notation on the top of the 1-9 indicating the need for a future update



## Reverification

Must be done by the  
expiration date of the  
employment authorization

# Section 3 of I-9

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**Section 3. Updating and Reverification** *(To be completed and signed by employer.)*A. New Name *(if applicable)*B. Date of Rehire *(month/day/year)* *(if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: \_\_\_\_\_ Document #: \_\_\_\_\_ Expiration Date *(if any)*: \_\_\_\_\_**I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

Signature of Employer or Authorized Representative

Date *(month/day/year)*

# Section 3 of the I-9

- Only use current version of the Form I-9

We need to be monitoring for Section 3 updates when an employee checks the attestation box in Section 1 that says:

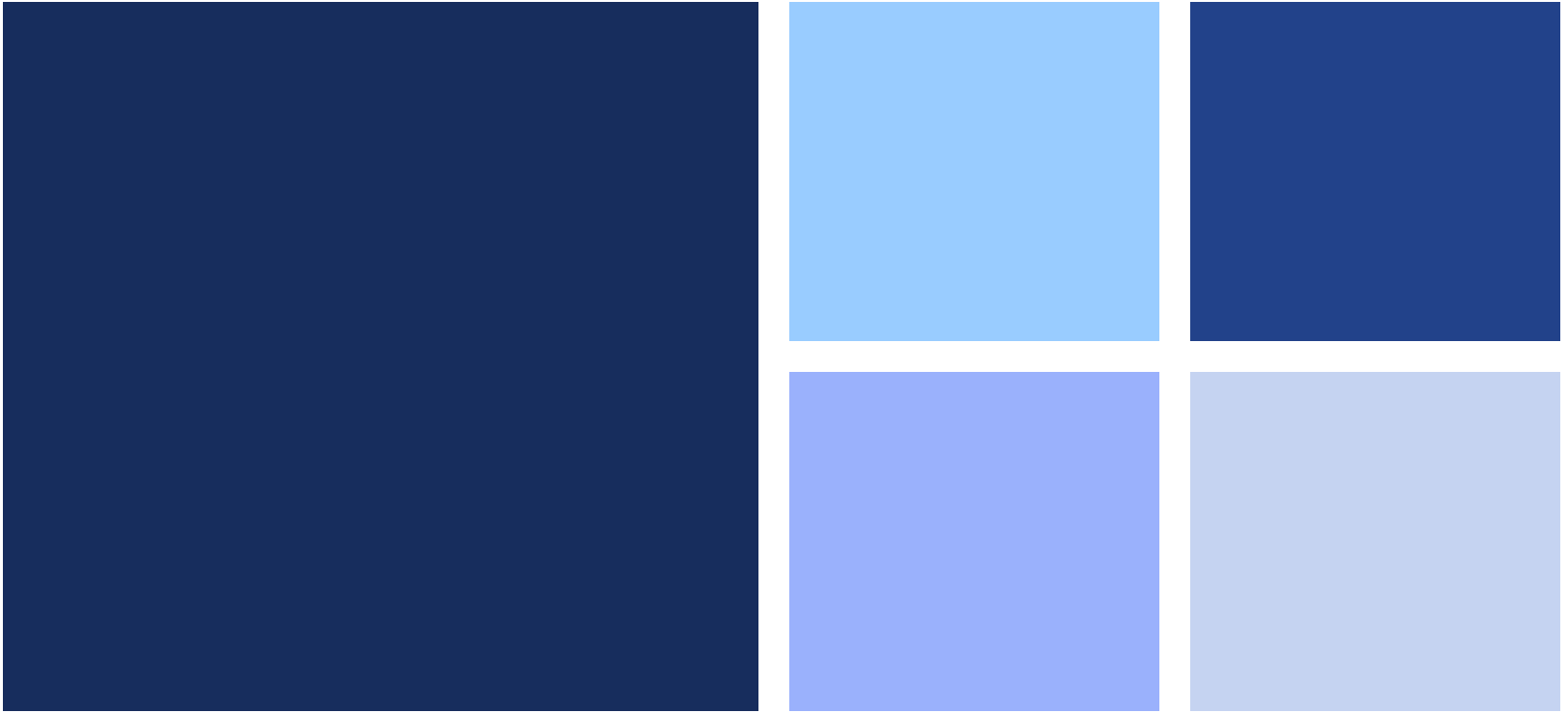
“An Alien authorized to work until \_\_\_\_\_”

Section 3 will need to be completed on or before the date listed above

- ✓ Your company needs to obtain proof of the employee's continuing ability to work in the U.S.
- ✓ Only verify work eligibility information
- Section 1 controls the reverification date

# Section 3

- Employee needs only show documentation establishing continued ability to work – we are not looking at the identity as this is someone we already "know"
- Begin sending reminders at 120 days
  - Continue to send reminders to the employee at 30 day intervals until new documentation is presented
  - Should the expiration date arrive and no new documents are presented, the employee must be terminated and removed from payroll immediately
- Identification cards do not need to be reverified when they expire
- Permanent Resident Cards should not be reverified when they expire



Rehires

The law provides a choice

# Section 3 - Rehires

- When may employers use Section 3 for re-hires?
  - When a previous employee is re-hired by your company you can use the original 1-9 and complete Section 3 at the time of re-hire (in many cases the section 3 will be done on a current version form and stapled to the original)
  - In place of either updating or reverifying, a new Form I-9 can be filled out but should only be done with FD's permission
- If the original Form 1-9 is more than 3 years old, or if no form was obtained or retained previously, you must complete a new 1-9 Form

# Section 3 - Rehires

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**Section 3. Continuing and Reverification (To be completed and signed by employer.)**

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A. New Name (if applicable) \_\_\_\_\_

B. Date of Rehire (month/day/year) (if applicable) \_\_\_\_\_

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

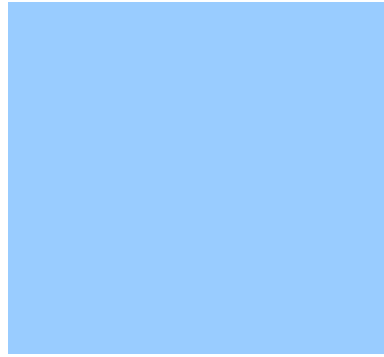
Document Title: \_\_\_\_\_ Document #: \_\_\_\_\_ Expiration Date (if any): \_\_\_\_\_

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative \_\_\_\_\_

Date (month/day/year) \_\_\_\_\_





## Retention of I-9s

Discard them as soon as  
legally permissible

# Retention

- 1-9 must be kept for:
  - Three years from the date of hire

**OR**

- One year after the termination of the employee's employment

WHICHEVER IS LATER!

Example:

DOH: 01/01/2009

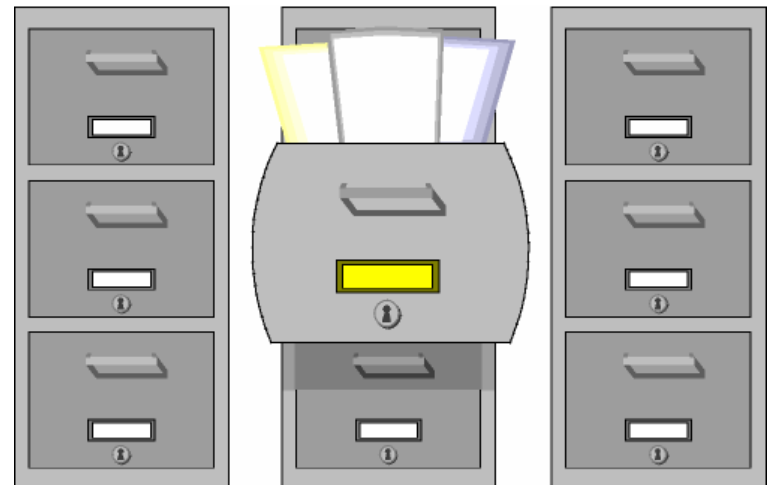
TERM DATE: 03/01/09

DISCARD DATE: 03/01/12

DOH: 01/01/2008

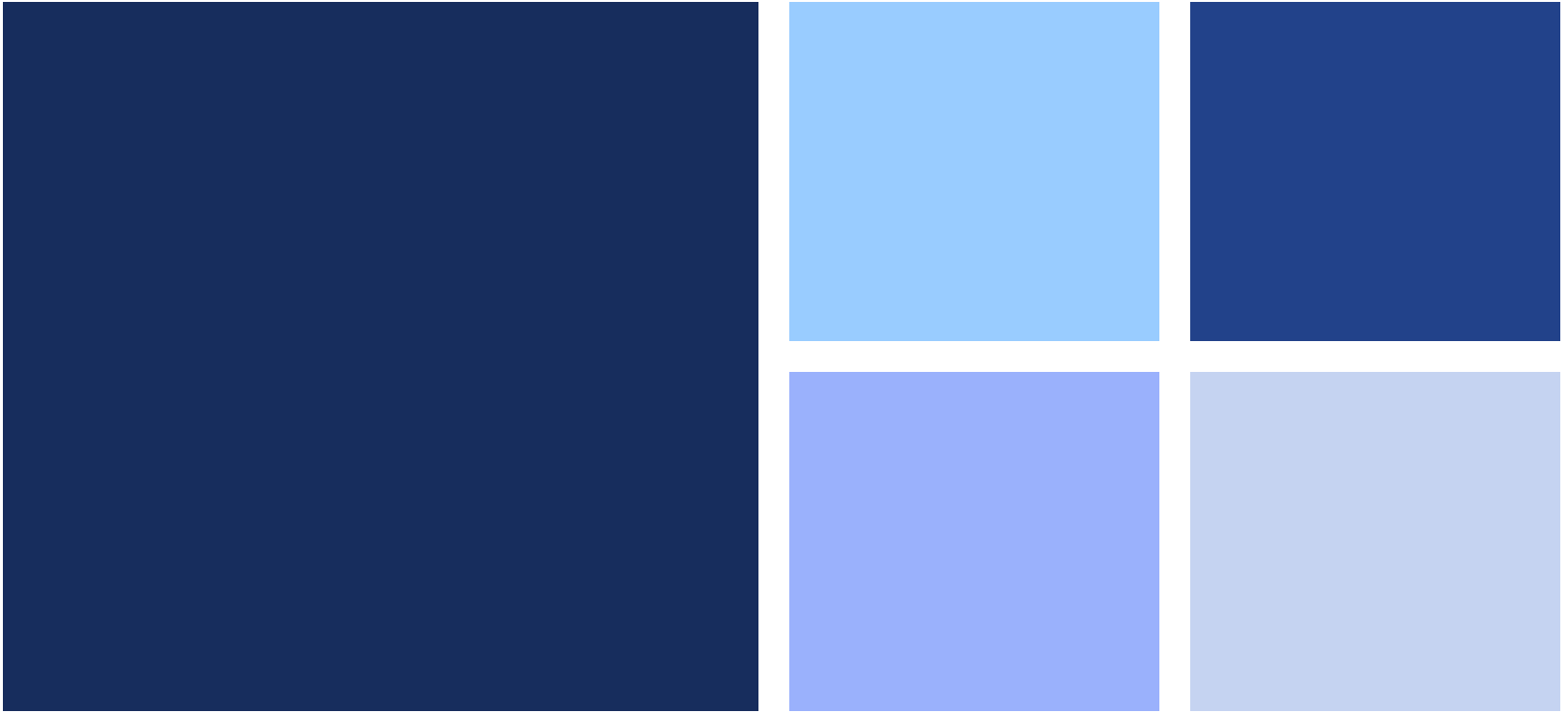
TERM DATE: 07/01/09

DISCARD DATE: 07/01/12



# Retention

- The Company utilizes a "Binder System"
- ALWAYS keep Under Lock and Key
- I-9s for active employees, inactive employees and those that require re-verification are filed in three separate binders - separate from personnel records



I-9 and Audit Corrections

# How to Make a Correction

- Audit corrections must be completed using Blue or Red pen
- Do not use white-out to make corrections. To correct a mistake, ~~cross it out with one line~~, circle the correction, draw a line to the correction, and initial and date.

L. Reiff  
6/14/2011

**Section 1. Employee Information and Verification** (To be completed and signed by employee at the time employment begins.)

Print Name: Last <del>Anne J.</del>	First Martin, Anne	Middle Initial J	Maiden Name
Address (Street Name and Number) 134 Cedar Dr		Apt. #	Date of Birth (month/day/year) 10/18/76
City Oklahoma City	State OK	Zip Code 73162	Social Security # 054-00-9874

*A. Martin*  
12/31/09

I attest, under penalty of perjury, that I am (check one of the following):

# Section 1 Corrections

- The Employee makes All Corrections in Section 1

<b>Section 1. Employee Information and Verification</b> <i>(To be completed and signed by employee at the time employment begins.)</i>			
Print Name: Last	First	Middle Initial	Maiden Name
[REDACTED]	[REDACTED]	[REDACTED]	
Address <i>(Street Name and Number)</i>		Apt. #	Date of Birth <i>(month/day/year)</i>
[REDACTED]		[REDACTED]	[REDACTED]
City	State	Zip Code	Social Security #
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</b>		I attest, under penalty of perjury, that I am (check one of the following):	
		<input type="checkbox"/> A citizen of the United States <input type="checkbox"/> A noncitizen national of the United States (see instructions) <input type="checkbox"/> A lawful permanent resident (Alien #) [REDACTED] <input type="checkbox"/> An alien authorized to work (Alien # or Admission #) [REDACTED] until (expiration date, if applicable - <i>month/day/year</i> ) [REDACTED]	
Employee's Signature		Date <i>(month/day/year)</i>	
[REDACTED]		[REDACTED]	

# Section 2 Corrections

- The HR Representative makes the corrections in Section 2

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date <i>(if any)</i> : _____		_____		_____
Document #: _____				
Expiration Date <i>(if any)</i> : _____				

**CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative _____	Print Name _____	Title _____
Business or Organization Name and Address <i>(Street Name and Number, City, State, Zip Code)</i> _____		Date <i>(month/day/year)</i> _____

# How do I Correct a Missing Employer Signature?

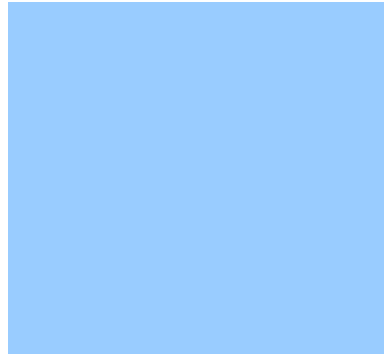
- Only the original preparer can complete a missing signature (use regular correction guidelines)
- If the original preparer is not available, the employee's identity and employment authorization documents must be brought in for review and the new certifier must complete a new 1-9 and attach it to the original.





# How do I Correct an Expired Document?

- Several types of documents can expire, including:
  - EAD cards
  - H-1B, L-1, and J-1
  - Receipts
  - 1-551 Stamps
- Track receipts for replacement docs - must be verified within 90 days
- If you discover work authorization is expired, complete Section 3



Penalties for  
noncompliance

The money adds up

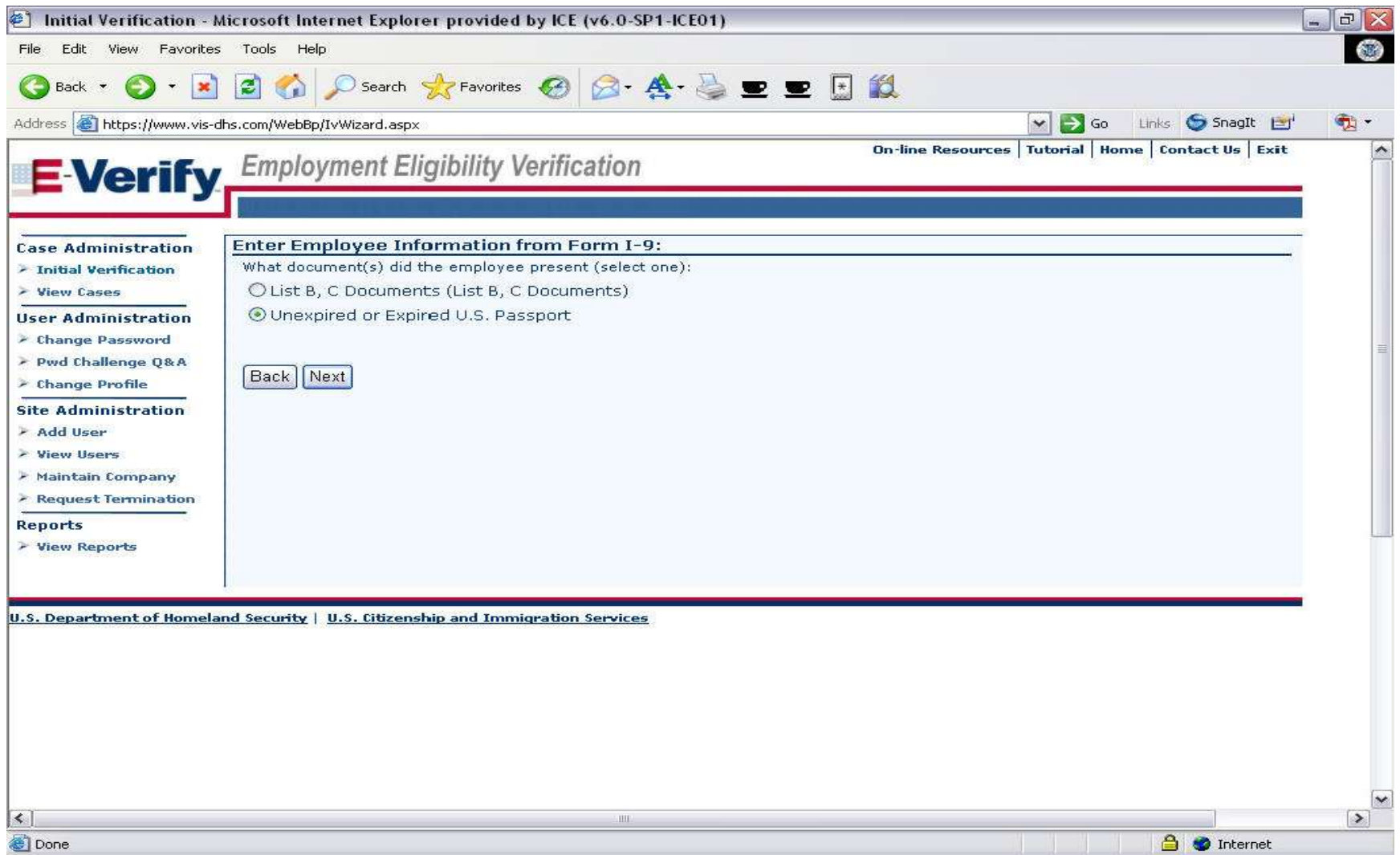
# Constructive vs. Actual Knowledge

It is unlawful to knowingly hire or continue to employ an unauthorized alien.

Constructive knowledge includes having information that would lead a person to reasonably conclude that person is not authorized to work in the United States.

This may include, but is not limited to, situations where an employer:

- ✓ **Fails to complete or improperly completes** the Form 1-9
- ✓ Employer fails to sign the 1-9 form
- ✓ Employer does not ensure that the employee properly completed Section 1 of the form, such as failing to enter an expiration date for employment authorization when the employee indicates that he is an alien with employment authorization (attestation box 3)



# E-Verify

The Devil's in the Details

# E-Verify Basics

- The best thing that is currently available
- Statistics still have substantial non-confirm rate for initial review
- Government databases are not updated quickly
- Federal Contractors have been mandated to use E-Verify, as the government claims it will lead by example, and contracts awarded on or after September 8, 2009 are mandated to use the system and flow down the requirement
- State Laws

# Pros and Cons of E-Verify

First the Pros:

- Relatively easy system to use for new hires
- Free system to ensure businesses are not hiring undocumented workers
- Provides affirmative defense that the employer did not "knowingly" hire an undocumented worker
- Good PR - Clear message to the public: Company is socially responsible
- Photo Screening Tool - Assist in detecting document fraud
- Will improve as other biometrics are added

# Pros & Cons of E-Verify

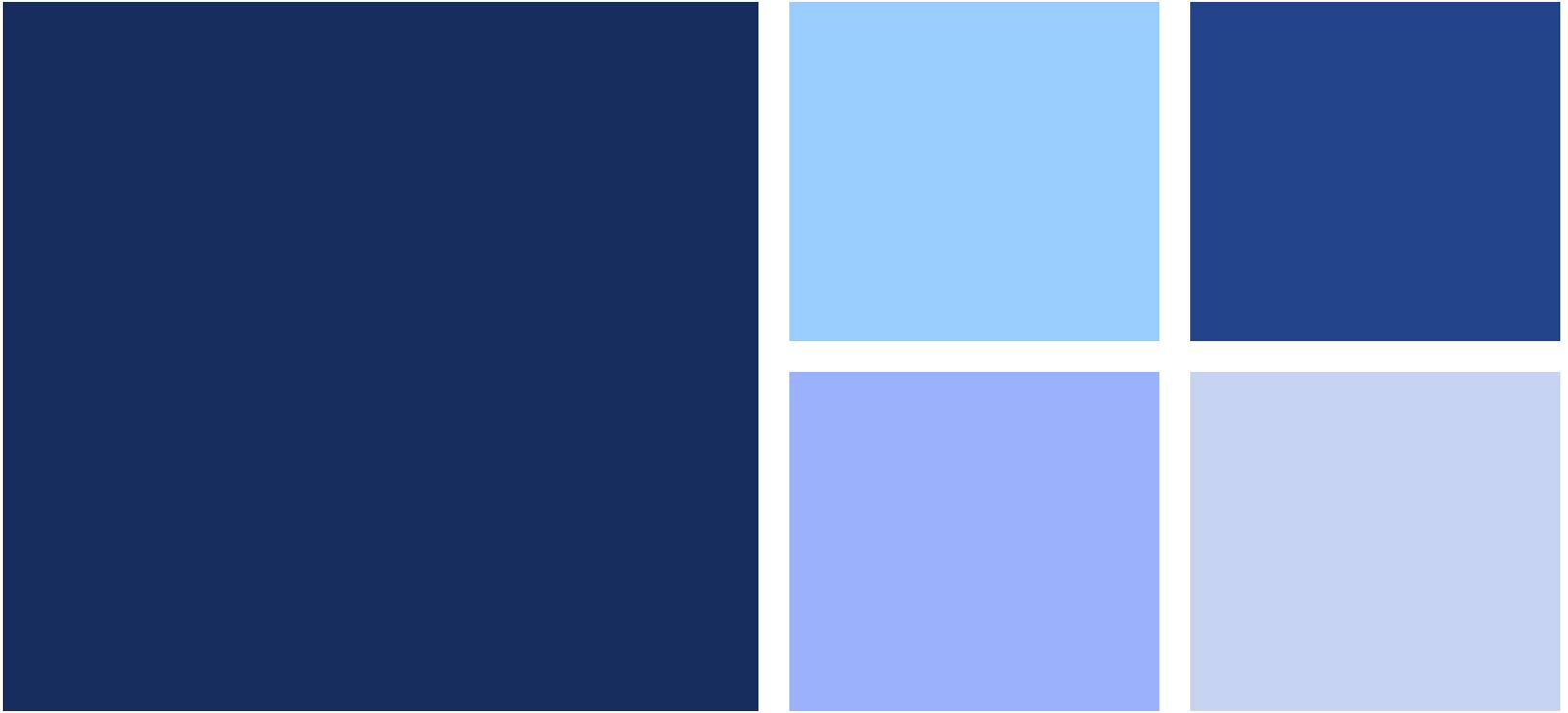
And the Cons:

- Not a "safe harbor" from worksite enforcement
- Agree to permit DHS and SSA to visit work sites to review E-Verify records **and** other employment records related to E-Verify
- Opportunity & Resource Costs
  - TIME : entering data, dealing with TNCs, finding replacement workers, E-Verify training
  - Cost estimates: \$9k per year for any company over 500 employees, or less than 1 percent of expected revenue for small entities —much higher
- Employers are bound by the terms of the MOU
- Discrimination suits based on improper application of E-Verify and MOU standards

# Responsibilities

- Unless you are a Federal Contractor, E-Verify **must ONLY be used to verify NEW hires**, and must be initiated after the employee accepts the position (hire date) and within 3 days of the employee's actual start date
- E-Verify procedures **must be applied to ALL new hires**, regardless of nationality or citizenship status
- Must have a training and audit protocol in place to review E-Verify and the 1-9 process together
- Must display the **E-Verify Poster** in an area visible to prospective and existing employees to show that it is an **E-Verify Participant (English and Spanish Versions)**
- Must display the **Anti-Discrimination Poster** issued by the Office of Special Counsel for Immigration — Related Unfair Employment Practices, Department of Justice (DOJ) in an area visible to prospective employees **(English and Spanish Versions)**





Using H-2Bs

# New Rules

- Two New Obama Administration Rules - Wage Rule and Overhaul of the Program
- Both Rules, if implemented effectively, kill the program

# Wage Rule

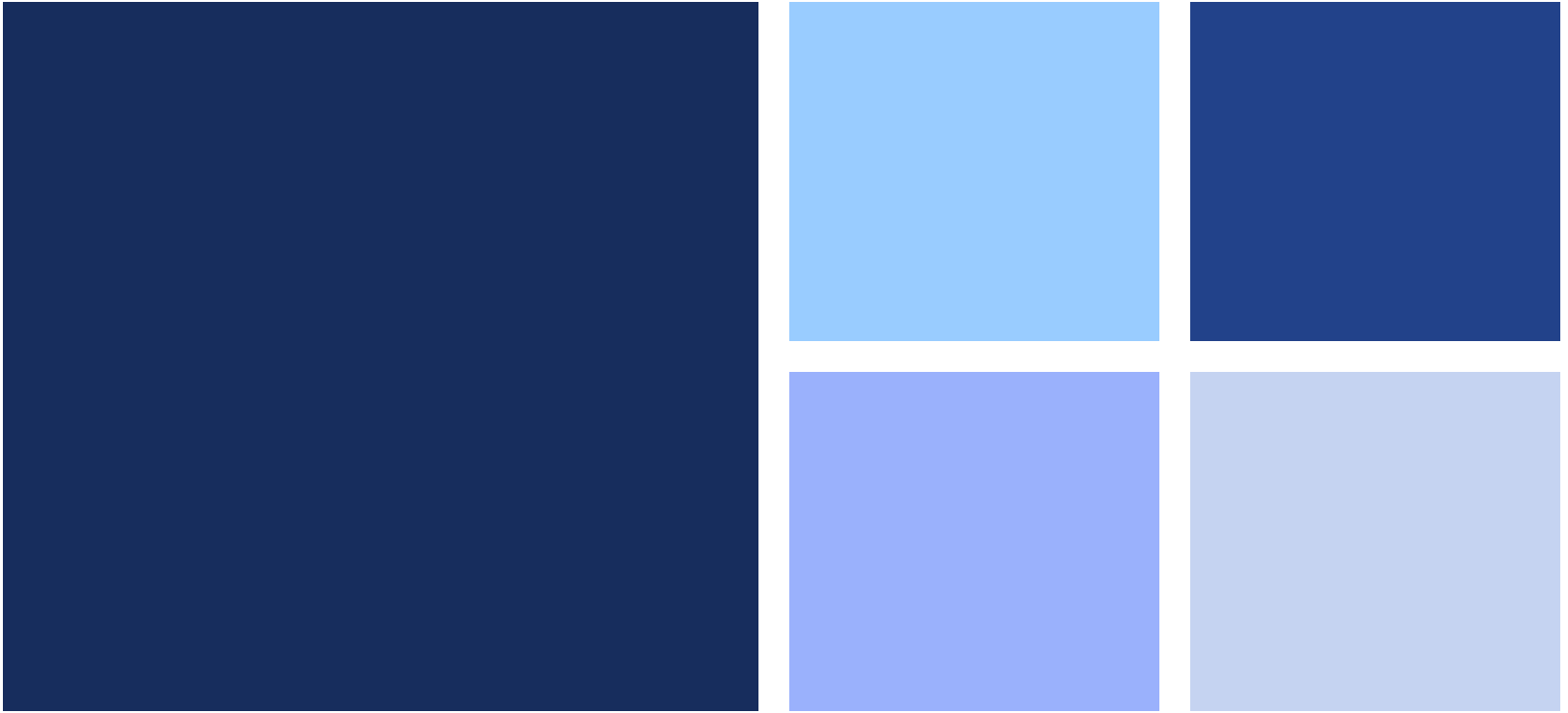
- H-2B Wage Rule has been published in Final
- Law Suit by H-2B coalition members in Florida challenging the rule has halted implementation, as has Congressional action

# Program Overhaul

- H-2B Overhaul of the Program
- This rule is pending final publication

# New Cases

- New H-2B Cases - Proceed Very Cautiously - Minefield



Social Security No  
Match Letters

# No Match Letters

- The Social Security Administration (SSA) resumed its practice of notifying employers of discrepancies in employee paperwork through “no-match letters” on April 6, 2011.
- The purpose of these letters is simply to ensure that workers are getting credit for their earnings; a now-rescinded [2007 Bush administration rule](#) turned the letter on its head. Under the rule, U.S. Immigration and Customs Enforcement (ICE) could use the receipt of a no-match letter as evidence that an employer had knowledge that the employee who is the subject of the letter is not authorized to work and required employers to take certain steps to avoid liability, including terminating employees who could not fix database errors. The new rule essentially sent the message that a no-match letter would be used against the employer to prove an immigration violation.

# Why send letters now?

- There is a risk that Employers fearful of ICE enforcement will ignore SSA's claims that the letters do not make an assertion about immigration status, and unnecessarily fire immigrant and US-born workers alike.
- I-9 re-verification or termination based solely on a no-match letter could violate anti-discrimination laws. At the same time ICE has stated that an employer's failure to adequately follow-up on no-match letters could constitute evidence of or contribute to an employer's constructive knowledge of an employee's unauthorized status.
- Employers who continue to receive no-match letters still face the predicament as to what their obligations are under the law upon receipt of a no-match letter. The confusion and uncertainty are a result of mixed messages from federal agencies as to what actions are required by employers when they receive a no match letter.



# Actions to Take in Response to an SSA No-match Letter

- **Do Not Jump To Conclusions:** Do not panic or terminate any employees. An employer may terminate an employee for employment eligibility violations only if the employer has actual or constructive knowledge that an employee is unauthorized to work in the United States. A no match letter alone does not constitute actual or constructive knowledge.
- **Investigate:** Do not ignore the no match letter. If an employer were to simply ignore a no match letter, ICE could certainly use this against an employer if ICE were to later learn that the employer employed an unauthorized worker. Check the employer's records to ensure that the employer did not make a typographic error in reporting the employee's SSN to the SSA. If there is no error, share the no match letter with each employee listed on the letter and advise the employee to check to be sure that the correct name and SSN has been submitted to the SSA. Do not require the employee to produce his or her social security card or any other specific documentation, as this could be considered document abuse under employment eligibility verification laws.
- Give the employee a reasonable amount of time to investigate and/or correct any errors. If there was an error, in addition to submitting the correct information to the SSA, the employer should also correct the employee's Form I-9. As with any employment matter, be sure to treat all employees listed on the no match letter similarly without regard to the employee's national origin, race or citizenship status.