

February, 2016

I-9 Compliance Bulletin

OSC/ICE Release Joint Guidance on Internal I-9 Audits

On December 17, 2015, the Office of Special Counsel (OSC) and Immigration and Customs Enforcement (ICE) issued their long awaited guide to internal employer I-9 audits, entitled “Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits”. The guidance states that it is intended to help employers structure and implement internal audits in a manner consistent with the provisions of the Immigration and Nationality Act (INA). As a best practice, employers should conduct regularly scheduled internal audits on an ongoing basis—generally at least once per year.

The guidance provides some valuable information on the appropriate purpose and scope of an internal audit—stating that if a subset of forms is chosen for an audit, the forms should be chosen in such a manner as to completely avoid any hint of being discriminatory or retaliatory in nature. In addition, the five plus page document states that an employer should exercise complete transparency when interacting with employees in the course of any internal audit.

Employers are reminded that only employees are authorized to make changes to information in Section 1 of the I-9, and that the employer should limit any changes they apply directly to Sections 2 and 3. If any deficiencies are identified, the employer should contact the affected employee privately and confidentially discuss those deficiencies, giving the employee copies of the form I-9 or any suspect documentation illustrating the possible deficiencies. Those employees who cannot speak English are to be communicated with the appropriate language where possible.

The guidance also notes that an employer is not required to terminate employees who, as a result of the employer's internal I-9 audit, disclose that they were previously not work-authorized, even though they are currently work-authorized. An employer may continue to employ the employee upon completion of a new I-9 noting the authorizing document(s), and should attach the new I-9 to the previously completed I-9 together with a signed and dated explanation, the guidance states.

Also of note is the fact that the guidance specifically calls out the Social Security Number Verification Service (SSNVS). This service is intended to be used solely for wage and tax purposes and not used as an employment authorization tool in the I-9 process. Any SSN mismatches as a result of an SSNVS query are not to be used as a basis to take adverse action.

Bottom line

Employers should continuously monitor the compliance landscape to keep abreast of regulations and enforcement positions that could affect their I-9 processes. Equifax Workforce Solutions can help simplify your internal I-9 audit process with the I-9 Audit and Remediation solution that automates inspection of historical I-9s to help identify errors, quantify risk, and prioritize corrections. The remediation tool assists employers and employees in making electronic corrections while providing a more comprehensive audit trail to help manage Form I-9 compliance. To receive more information on how Equifax Workforce Solutions can assist your company in creating a strong culture of compliance with your I-9 processes, or get your official copy of the OSC/ICE joint guidance, please contact Pete Krieshok at pete.krieshok@equifax.com, with the subject line of “I-9 Compliance Bulletin.”