

May 2013 Brings New Immigration Forms

May 23, 2013

New versions of several key immigration forms have been released in 2013. Among these new forms are the G-28, Notice of Entry of Appearance as Attorney or Accredited Representative; the I-9, Employment Eligibility Verification; and the I-94, Arrival/Departure Record. These revised forms are now in use, with prior versions either soon to be or no longer accepted or issued. Specifically, U.S. Citizenship and Immigration Services (USCIS) will not accept earlier versions of the G-28 after May 26, 2013 and, as indicated in our prior client alerts, employers were required to begin using the new I-9 as of May 7, 2013 and Customs and Border Protection (CBP) began issuing electronic I-94s on April 30, 2013.

G-28

On March 28, 2013, USCIS published a revised version of Form G-28. USCIS advised the new form was immediately available and that it would not accept earlier versions after May 26, 2013.

The G-28 is the form used by attorneys and accredited representatives to establish their representation of an applicant, petitioner or respondent. When this key form is properly completed, signed by both parties and filed, it will be recognized by USCIS, CBP, and U.S. Immigration and Customs Enforcement (ICE) for the duration of the matter for which it is submitted, allowing the representative to properly act on behalf of the respective party.

Those used to the old G-28 may be surprised to see the new version, which contains a number of key differences. Perhaps most noticeable is the form is now two pages instead of one. The first page only lists the representative's information and the applicant, petitioner or respondent's information is now listed on the second page. In addition, both parties must now sign on the second page of the form. Finally, following what appears to be a new USCIS formatting trend, the information is organized into two separate columns per page.

I-9

The new Form I-9 also is now in effect. As detailed in our previous client alert, starting May 7, 2013 employers are required to use the revised I-9 for all new hires. In the event an employer uses an old version of the I-9 after May 7th, it is a technical violation that can be corrected by completing a new I-9 or attaching a written explanation of the error to the original I-9.

Employers must complete an I-9 to verify the identity and employment authorization for all employees hired in the U.S., regardless of immigration status. To complete the I-9, the employee must attest to his employment authorization and present evidence of identity and employment authorization from the list of acceptable documents on the last page of the form. The employer must review the employee's documents to confirm and attest that they appear to be genuine, are for the person presenting them, and that the individual appears to have employment authorization.

While there are no substantive changes to the underlying law or regulations, the revisions to the I-9 are worth noting. Like the G-28, the Form I-9 also has expanded from one to two pages. The instructions have expanded as well and employers should be sure to provide new hires with the updated instructions when completing the form. Another key difference is the form has two new optional fields that may be completed by the employee. Specifically, the employee may now provide an email address and telephone number. In addition, the accompanying M-274, Handbook for Employers has been revised to reflect the changes to the I-9. We recommend maintaining a copy of the older version of the M-274 with the updated copy as a reference for any I-9's that were completed prior to the recent update.

I-94

As indicated in our March 28, 2013 client alert, CBP started rolling out its new electronic Form I-94 program, eliminating the paper I-94 card, on April 30, 2013. As such, now most travelers arriving by air and sea should receive a passport stamp and electronic record of admission. Foreign nationals arriving by land border, refugees and asylees should continue to receive a paper Form I-94.

The Form I-94 evidences a foreign national's nonimmigrant status and authorized period of admission to the United States. As such, the I-94 is a critical immigration document and vital not only for verifying immigration status, but also such things as demonstrating employment authorization and securing a Social Security card and driver's license.

The principles regarding the I-94 remain unchanged, but the revised process is significant. Under the new system, the paper I-94 card is replaced with an admission stamp directly in the foreign national's passport and the electronic I-94 that may be accessed at www.cbp.gov/I94. The electronic I-94 is completed by CBP at the time of entry by looking at the individual's passport in combination with information captured from the Advance Passenger Information System (APIS) and the Department of State's Consular Consolidated Database. APIS information also is culled when individuals leave the U.S. by air or sea, thereby capturing information regarding a foreign national's departure. While land borders will continue to issue paper I-94's, departures from the U.S. via land borders will no longer be recorded. Therefore, if foreign nationals leave the U.S. by land they are advised to maintain evidence of the departure.

For more information about the new electronic I-94, please see our March 2013 client alert, CBP Implements Automation of the I-94 Arrival Record Card, available [here](#).

The Proskauer Immigration and Nationality Group is available to answer any questions you may have with regards to these revised forms and procedures.