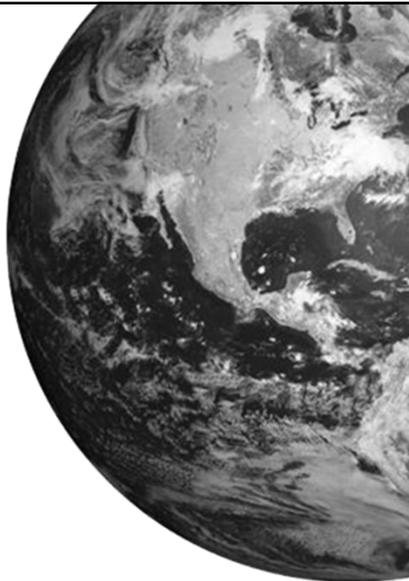


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 **BAL** Corporate Immigration

Form I-9 – Risk Assessment and Mitigation Strategies

SCCE Compliance & Ethics Institute, Chicago, IL
September 25-28, 2016

Alessandra Bortolotti – CFE, CCEP, CICA Client Services Manager - Compliance

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Form I-9 – A Star Is Born

- Do We Know What We Know That We Don't Know?
 - Form I-9 regulations are fluid, complex and nuanced ('50 shades of grey');
 - Don't be afraid to seek qualified legal assistance and counsel;
 - The biggest enemy to Form I-9 compliance: those who 'know it all.'
- Do or Do Not... There is No Try.
 - With Form I-9 compliance, it's not a 60/40 effort or an 80/20 or any ratio thereof;
 - You're in or out 100%.
- Yes, They Are Following You!
 - Paranoia is good... when it comes to Form I-9 compliance!
 - Be mindful of ever-increasing audits and resulting penalties (costs are not only \$, but reputational too);
 - Maintain good compliance and best practices;
 - Keep yourself up to speed and/or rely on a trusted qualified advisor.
- You Can Run But You Can't Hide.
 - Denial isn't just a river in Egypt; it is a very powerful current in the world of Form I-9;
 - Like any good compliance or 12-step program, identifying you have a problem is the first step towards a solution.



Form I-9 Risk/Mitigation

- A Long Time Ago, In A Galaxy Far Far Away...
 - Assess your pre-hire and new hire/on-boarding experience:
 - Suggestions: shadow the process, harken back to when you first were hired, look at the communication sent to new hires and look at where Form I-9 falls within the process;
 - Ask yourself:
 - Is the communication clear (even if Form I-9 is complex)? Does it explain what Form I-9 is? Does it explain what is required of the new hire (offer the USCIS Lists of Acceptable Documents; never require specific documentation combinations/types);
 - Where does completion of Form I-9 fit in the new hire/on boarding experience? First, middle, last (perhaps it should be first)?
 - Who completes Section 2 – is the staff properly trained, aware of the compliance implications of Form I-9, familiar with types of documentation, etc.?
 - Observe written, verbal and non-verbal communication during the new hire/on-boarding experience:
 - Suggestions: how are Form I-9 instructions and directives provided to the new hire? Are new hires able to ask questions and, if so, is the staff properly trained but in compliance with the regulations (usually, the number one problem is an employer requesting specific documentation)? Do you have readily available copies of the USCIS Lists of Acceptable Documents and instructions?
- Middle Earth
 - How is Section 2 completed and certified and by whom...
 - Must be done in the presence of the new hire and by reviewing original documentation; Is the staff trained? Is the staff able to handle special situations? There are hundreds of ways an individual can be legally authorized to work in the U.S.
 - Where does Form I-9 go from here?
 - Electronic Form I-9? Paper Form I-9? E-Verify®? Copies of back-up documentation?
 - Mind the re-verifications...
 - Keep an eye out to those new hires who are subject to re-verification – use spreadsheets or tickler functions to ensure compliance.

Form I-9 R/M ... The Sequel

- The Age of Stor-age
 - How you store and retain your Form I-9s (and back-up documents, if chosen) is as important as proper completion of Form I-9 itself:
 - Electronic or paper Form I-9? Both have pros and cons;
 - Be mindful of the retention guidelines of Form I-9 and where to keep Form I-9 records;
 - Ensure a controlled access system – only certain staff should have access to Form I-9 records.
 - Select a Form I-9 administrator or responsible party:
 - In case of an ICE Notice of Inspection or should you want to periodically audit your Form I-9 records (which should be a best practice), you should have a person who has access to the records (and a back-up);
 - Suggestion: it's best if the Form I-9 administrator is not also the auditor or a staff member who completes Form I-9s (why? See later...)
- And They Lived Happily Ever After!
 - You're all done and compliant – now you can rest easy and play PokemonGo, right?
 - Wrong! Regulations change frequently; ICE's focus changes; fluidity is the name of the game;
 - Different immigration statuses require different approaches and updates (i.e.: H-1B portability, TPS, DACA);
 - ➡ Never be afraid to seek qualified legal counsel and assistance.
- Winter Is Coming
 - Always prepare for ICE... audits, that is;
 - Preparation is the best mitigation, but it does not occur in a vacuum;
 - **Train, audit, seek qualified advice, audit, reevaluate** – rinse and repeat!

The Dark Side of The Force

- The Symptoms of the Diseases
 - Form I-9 issues can sometimes be the symptoms of greater diseases:
 - Disease 1: deficient pre-hire/new hire/on-boarding process (very common);
 - Disease 2: poorly trained staff (very common);
 - Disease 3: underestimating the importance of Form I-9 to the overall compliance and risk assessment strategy (most common);
 - Disease 4: widespread pandemic of "Know-It-All-Itis" (common).
- Glitches in The Matrix
 - So you think Form I-9 issues cannot possibly be related to...
 - ✓ **Bribery** – oh yes... Case study: HR employee offered bribes to falsify information on Section 2 – one of the reasons why your auditor should not also complete and certify Form I-9s;
 - ✓ **Fraud** – document fraud is sadly rampant (recognizing fraudulent documentation is risky – document identification training is a good investment, but be mindful of document abuse/discrimination). Case study: LPR card with country of birth listed as Narnia, but otherwise LPR card looked pretty good;
 - ✓ **Identity theft** – even with E-Verify®, it can be difficult to detect stolen identities (what if an individual is using another person's valid SSN with a valid List B with his/her photo?). Case study: employee using SSN and valid state-issued DL, but SSN was from batch of Puerto Rican ID theft in early 2000s; this came up from a SSA query;
 - ✓ **Human/labor trafficking** – particularly with certain categories of visas (J-1s, H-2As, H-2Bs) – hard to detect. Case study 1: large volume of H-2B workers (seasonal visas), most of whom returned on 'adjustment-pending' EADs based on marriage to USC; when interviewed, further evidence resulted. Case study 2: J-1 trainees from agencies under sanction by the DOS; quit and ended up in strip clubs under duress/coercion.

THINK AGAIN! FORM I-9 IS OFTEN A WINDOW AND PORTAL INTO RISK AND COMPLIANCE PITFALLS!

I-9 of The Tiger

- The Pros of Solid Form I-9 Risk Assessment and Compliance

- **Cost** – potential of reduced fines in case of an audit (stress on 'potential') – always seek out qualified counsel. Even if the initial costs of training, auditing, legal counsel, etc. seem high, imagine the costs (financial, reputational and possibly even criminal) if you are non-compliant. *Case study:* a good faith effort on Form I-9 compliance was instrumental during an ICE audit;
- **Solid compliance foundation** – as the first compliance step for all new hires, a compliant Form I-9 program sets the tone for your compliance activities. *Case study:* organizations with strong Form I-9 compliance programs tend to have strong overall compliance programs in many other areas;
- **Knowledge** – having a properly trained staff who can professionally manage various scenarios in compliance with the regulations is always an asset, particularly if your organization has a diverse or multinational employee workforce with various types of employment eligibility. *Case study:* understanding scenarios involving permanent residents with 'green cards' and how they are never re-verified made a young naive employee realize how many jobs she could have lost due to lack of knowledge and resulted in her pursuit of an immigration law career, eventually leading to today;
- **Plugging the holes in the fraud triangle** – as Form I-9 is often a doorway into other types of risks, Form I-9 compliance can lessen the magnetism of opportunity, pressure and rationalization. *Case study:* when interviewing some corporate fraudsters, many pointed out that Form I-9 was the first 'test' to see how seriously an organization took risk and compliance, and how far they could go.

- Cons

- There are never any cons when it comes to compliance.
- **However, you may be employing cons if you are careless with it!**

Q&A

- Questions?

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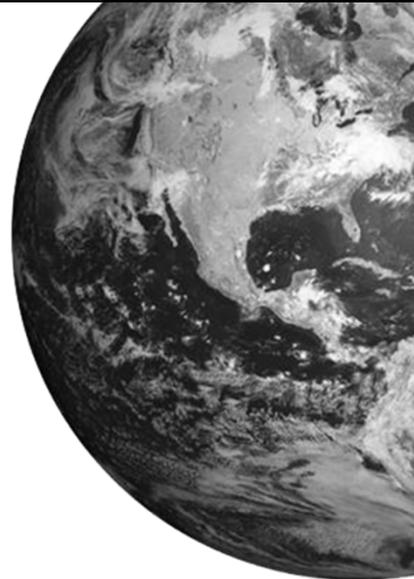
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