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IMMIGRATION PRACTICE

# ALERT

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## SOCIAL SECURITY MISMATCH RULE AND THE NEW I-9

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### Controversy Over Social Security Mismatch Rule Continues New I-9 Form Becomes Mandatory

On December 5, 2007, the Department of Homeland Security (DHS) filed an appeal on the preliminary injunction granted by the U.S. District Court on October 10, which prevented the implementation of the new August 2007 “Safe-Harbor Procedures for Employers Who Receive a Mismatch Letter” Rule. The Rule created rigorous measures for employers when in receipt of a mismatch notification and increased liability for failing to follow specific “safe harbor” procedures. According to DHS, the appeal affirms that it has no plans of abandoning the new ‘no-match’ Rule.

This appeal follows DHS’ November 23, 2007, request to the district court to put on hold the lawsuit related to the Rule until a new final rule is issued – or until March 24, 2008, whichever comes first – to permit DHS’ new rulemaking efforts. DHS had then asserted that its next new rule will address the court’s concerns with the current regulation. Since DHS’ request to suspend the Rule was not met favorably, it filed the appeal on the preliminary injunction.

In a December 5 statement announcing the appeal, DHS Secretary Michael Chertoff confirmed that DHS is, in fact, trying to revise the new ‘no-match’ rule to make it acceptable to the court, while simultaneously trying to overturn the court’s injunction through the appeal. DHS has stated that its intention by pursuing both paths simultaneously is to obtain a resolution as

quickly as possible. Once DHS revises the rule, it may ask the court to vacate the preliminary injunction.

Originally scheduled to take effect on September 14, 2007, the rule created strict procedures for employers to follow in response to a no-match letter from the Social Security Administration (SSA) or Immigration and Customs Enforcement (ICE). In October, the court issued a preliminary injunction that prevented the government from implementing the new rule and stopped the SSA from its planned transmission of its new no-match notices, which incorporated these new procedures, to employers. The court based its decision to grant the injunction on its opinion that implementing the new rule would cause irreparable harm to employers and workers.

If DHS’ appeal is successful, the original August 2007 “Safe-Harbor Procedures for Employers Who Receive a Mismatch Letter” Rule would become effective immediately. Please see our [October 2007 Alert](#) for additional information on the specifics of this Rule.

### New I-9 Form Becomes Mandatory

The U.S. Citizenship and Immigration Services (USCIS) has made the use of the newly revised Employment Eligibility Verification Form (I-9 Form) **mandatory as of December 26, 2007**, via a November 26, 2007, *Federal Register* notice. This means that ALL employers must use the new version of the form (dated June 5, 2007) for newly hired employees on or before December 26, 2007, and all previous versions

of the form (dated May 31, 2005, or earlier) become invalid as of this date.

USCIS issued the revised I-9 Form and Handbook for Employers on November 7, 2007. All U.S. employers are required to complete a Form I-9 for each employee hired in order to verify that the individual is authorized for employment in the United States under the Immigration Reform and Control Act of 1986 (IRCA). The amended Form I-9 contains an updated list of acceptable identity and employment authorization documents that reflect the current regulations. As of December 26, employers who fail to use the newest

version of the I-9 Form for new hires will be subject to applicable penalties. Please see our [November 2007 Alert](#) for additional information on the specifics of the new I-9 Form.

For more information regarding the issues addressed in this *Alert*, or if you require assistance with your company's immigration issues, including IRCA compliance, raid planning, audits, or investigations, please contact the author at [immigration@foxrothschild.com](mailto:immigration@foxrothschild.com) or 973.994.7800, or another member of Fox Rothschild's Immigration Practice. Visit us on the web at [www.foxrothschild.com](http://www.foxrothschild.com)

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