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## **HOMELAND SECURITY SHIFTS STANCE ON PRE-POPULATION OF FORM I-9**

U.S. Immigration and Customs Enforcement (ICE), through Homeland Security Investigation's (HSI) Worksite Enforcement Division, announced that as of October 9, 2013 it holds no official position on the pre-population of Section 1 of the Form I-9 by electronic I-9 software programs. This announcement contradicts guidance HSI provided earlier this year regarding the topic, as well as recent guidance from the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

The OSC had stated in August that it was opposed to pre-population of the Form I-9, citing a possible increase in the likelihood of errors, including the pre-population of inaccurate or outdated information which could lead to improper refusal of documents presented during employment verification.

The vague guidance provided by HSI leaves open the question of whether pre-population of Section 1 is appropriate. Employers using electronic Form I-9 software or considering the use of such software, especially where fields in Section 1 are pre-populated, are encouraged to contact their FosterQuan attorney to address possible issues related to completion of the Form I-9, including when pre-population of the Form I-9 may be acceptable and possible discriminatory practices.

FosterQuan will continue to monitor developments in Form I-9 guidance and compliance and will make future updates available via our Immigration Update® bulletins and on our website at [www.fosterquan.com](http://www.fosterquan.com).