PROGRAM MATERIALS
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Immigration Compliance and Enforcement Update 2021: No Rest for the Weary

Celesq® AttorneysEd Center
www.celesq.com

5255 North Federal Highway, Suite 100, Boca Raton, FL 33487
Phone 561-241-1919

Immigration Compliance and Enforcement Update 2021: No Rest for the Weary

vbrown@duanemorris.com Valentine Brown @vbimmigration

DuaneMorris®
www.duanemorris.com

Overview of Presentation

1. I-9 & E-Verify Compliance and Enforcement
   a. I-9 Requirements and Best Practices
   b. I-9 Audits and Investigations
   c. E-Verify Compliance
2. Immigration Related Employment Discrimination
   a. Definitions
   b. Civil Actions, Investigations, and Penalties
   c. Recent Case Examples

Overview of Presentation Continued

3. Compliance for Visa Sponsors and Employers
   a. F-1 STEM OPT Training Plans
   b. H- 1/2 Prevailing Wage and Public Access File Requirements
   c. L-1 Status Requirements
   d. Site Visits Best Practices
4. Corporate Response to Large Scale Investigations
   c. Setting up a legal response team
   d. Respond Quickly to Ameliorate discovered problems
   e. Monitor Internal Corporate Communications- A/C Privilege

I-9 Basics

1. References: INA §274A(b) [8 USC §1324a(b)]; 73 FR 76505 (Dec. 17, 2008) [interim rule]; 74 FR 2838 (Jan. 16, 2009) [correction to interim rule]; 74 FR 10455 (Mar. 11, 2009) [correction to interim rule]; 76 FR 21225 (Apr. 15, 2011) [final rule adopted without change]; 75 FR 42575-78 (July 22, 2010) [final rule regarding electronic signature and storage of I-9]; 78 FR 21144-45 (Apr. 9, 2013) [corrected notice]; 85 FR 5683-8514 (Jan. 31, 2020) [revised I-9 form as of 10/21/19]; USCIS, Handbook for Employers: Guidance for Completing Form I-9 (Apr. 27, 2020); USCIS website "I-9 Central" (www.uscis.gov/i-9-central)
2. Agency Resources:
    a. Handbook for Employers (Form M-274)
        i. https://www.uscis.gov/i-9-central/handbook-employers-m-274
    b. USCIS I-9 Central
        i. https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9
    c. I-9 Form Instructions
        i. https://www.uscis.gov/i-9

I-9 Basics

Employers Must

1. Verify the identity and employment authorization of each person hired after Nov. 6, 1986.
   a. For employment in the Commonwealth of the Mariana Islands (CNMI), this verification requirement applies to persons hired after Nov. 27, 2009.
2. Complete and retain Form I-9, Employment Eligibility Verification, for each employee who is required to complete the form.
3. Employer must examine documents within 3 business days of hire, 8 CFR §274a.2(b)(1)(ii), unless hire is for less than 3 business days. Then must complete I-9 on day 1 of employment 8 CFR §274a.2(b)(1)(iii).

Employee Attestation

1. Employee must attest either by written or electronic signature that he or she is a USC, U.S. National, LPR, or authorized to work on Form I-9. INA §274A(b)(2) [8 USC §1324a(b)(2)].
2. Employee must complete the attestation on the date of hire, 8 CFR §274a.2(b)(1)(i)(A),

I-9 Basics: Who needs an I-9

YES

1. All employees hired after November 6, 1986
2. Employees who are rehired more than 3 years after original hire date

NO

1. Independent contractors
2. Internal transfers (affiliate, division)
3. Rehires within 3 years of initial I-9
4. Temporary layoff, leave of absence, strike, seasonal.
5. Employees of Independent Contractors
6. Casual Hires- Domestic Sporadic/Intermittent Work

I-9 Process: Best Practice for Employers

1. Provide Employee with Form and Document checklist – ask to complete Section 1
2. Receive original documents from employee and complete Section 2
3. Examine documents for veracity and accuracy
4. Review entire form for accuracy and Completeness – Sign the form
5. Copy employee documents
6. Enter any required Tickler dates into HRIS System
7. Retain I-9 Form – separate from HR files in secure location

I-9 Basics: Record Keeping & Retention

Maintain I-9s Separate from HR and Personnel Files

Maintain 3 I-9 Files

1. Active Employees LPR & USC
2. Files that Require Reverification
3. Terminated Employees – by date of termination

Retention Rule: 1 year from termination date of employment or 3 years, whichever is longer. INA §274A(b)(3)(B) [8 USC §1324a(b)(3)(B)]; 8 CFR §274a.2(b)(2)(i)(A).

I-9 Verification: Civil Violations & Penalties

1. Failure to Complete or Properly complete I-9 Forms, 8 CFR §274a.10(b)(2). Penalty: $234 to $2,332 for each I-9 (after 6/17/20)
2. Making false statements on the I-9 Form 18 USC §1546(b), and is also an offense under 18 USC §1001, regarding material misrepresentations to federal officers.
3. Knowing Hire – employing foreign national knowing he/she is not work authorized; INA §§274A(a)(1)(A) and (h)(3), 8 USC §§1324a(a)(1)(A) and (h)(3). See ICE Form I-9 Inspection Overview (Aug. 19, 2019) at www.ice.gov. Penalty: 8 CFR §274a.10(b)(1)(ii)(A). $583 to $4,667 for each person (after 6/17/20)
4. Continuing to employ foreign national once employer has learned that he/she is not work authorized INA §§274A(a)(1)(A) and (h)(3), 8 USC §§1324a(a)(1)(A) and (h)(3). See ICE Form I-9 Inspection Overview (Aug. 19, 2019) at www.ice.gov. Penalty: 8 CFR §274a.10(b)(1)(ii)(A). $583 to $4,667 for each person (after 6/17/20)

I-9 Investigations

1. Audit Notice – Notice of Inspection (NOI)
   - 3 Days to Comply 8 CFR §274a.2(b)(2)(ii)
   - Administrative Subpoena also possible INA §274A(e)(2)(C) [8 USC §1324a(e)(2)(C)]
   - Always Requests other information
     - Employee Information
     - Social Security Mismatch letters received
     - Payroll Records
     - Time Cards
     - I-9s for the Prior 3 years
     - Independent Contractor Information

I-9 Investigations

2. Employer Responses
   a. Comply
   b. Request Extension of Time
      i. Disruptive to Normal Operations
      ii. Overly burdensome
      iii. Will Comply within reasonable timeframe
   c. Refuse to Comply
      i. Government must go to Federal Court to enforce subpoena – Standard: Seriously disruptive to normal business operations

I-9 Investigations

3. Helping Employers Prepare the I-9 Response
   a. Audit and Correct all I-9s prior to submission
   b. Identify and prepare missing I-9s
   c. Determine which other documents to submit to HIS
   d. Determine best method of submission, electronic v. paper
   e. Identify consistent Independent contractor policy and include/don't include information with audit submission
   f. Use every opportunity to build up a good faith defense

I-9 Corrections General Rules

1. Complete Transparency
2. No White-Out
3. Single line through wrong information
4. No back-dating
5. Initial and date all changes in different ink
6. Person who made the mistake should correct it, if at all possible
7. When a New I-9 is required
   a. Reverifications – always on current version of form – attach new form to the old
   b. Unsalvageable form – keep old form with the new
   c. E-Verify: new I-9 required if information on old form is wrong, outdated or (immigration) documents are expired

Corrections

1. Procedure for Corrections Involving Employees
   a. For Section One Corrections: explain your procedure and purpose, be sure they do NOT back date, but do initial and date all changes
   b. For Section Two Corrections:
      i. Explain I-9 audit purpose and procedure
      ii. Give them the document list on page 2 of the I-9 form
      iii. Recommended to give 30 days to provide missing documents
      iv. Put Policy in place ahead of time regarding termination of existing employees based upon audit results
2. Mistakes that Cannot be Corrected
   a. Section one for Terminated Employee
   b. Forms completed after the 3rd day of hire
   c. Wrong Form Version
   d. Company Certification completed late

I-9 Investigations

1. Notices after an Audit 8 CFR §274a.9(c);
   a. Notice of Technical or Procedural Failures
   b. Notice of Discrepancies
   c. Notice of Suspect Documents
   d. Warning Notice
2. Employer Actions
   a. Corrections made by the responsible individual
   b. Terminations of Undocumented Employees
   c. Provide reasonable explanation for inability to correct

Notice of Intent to Fine: 8 CFR §274a.9(d)(1)

1. Factors to determine range of fines INA §274A(e)(5)
   a. Whether the employer knowingly hired undocumented workers or committed a paperwork violation
   b. Prior offenses
   c. The percentage of total reviewed I-9s that have violations, and
   d. Other factors such as business size, good faith, seriousness, employment of unauthorized aliens, and history.
2. Under INA §274A(b)(6), with respect to investigations conducted after Sept. 30, 1996, ICE should defer issuance of an NIF until the employer is given notice of the technical or procedural violations and is provided at least 10 business days to cure the deficiencies.

I-9 Investigations

1. Good Faith Defense Factors
    a. 8 USC §1324a(a)(3); 8 USC §1324a(b)(6)(A)
        i. Substantial Compliance
        ii. Corporate Immigration Policy
        iii. Self Audits
        iv. HR Training
        v. Sub Contractor Agreements
        vi. Using SAVE or E-Verify

I-9 Investigations

1. Good Faith Defense Lost
   a. Technical or procedural violations intentionally committed to avoid proper verification
   b. Corrections made with knowledge/wanton disregard of false information
   c. Preparation of I-9 with knowledge/ wanton disregard of false information
   d. Employer was previously notified of similar failure

E-Verify: *Kurzban's Immigration Law Sourcebook, 17th Ed. (2020)*

1. **The E-Verify system** originated in 1996 as the "Basic Pilot" system, a pilot program between INS and SSA. IIRIRA §§401-05. 76 No. 45 Interpreter Releases 1693, 1698–1705 (Nov. 22, 1999); Basic Pilot Program Extension and Expansion Act of 2003, PL 108-156, 117 Stat. 1944 (Dec. 3, 2003) [expanding the program to all states by Dec. 1, 2004].
2. **E-Verify Self Check**—USCIS has a voluntary service for individuals to check their own work authorization status prior to employment and facilitate correction of potential errors in federal databases that provide inputs into the E-Verify process. The individual will be notified if he received a match and therefore is work eligible or a mismatch. If a mismatch he will be given instructions on where and how to correct his records as a possible mismatch with SSA or immigration information. 76 FR 9034-38 (Feb. 16, 2011)
3. **My E-Verify**—USCIS has a website called "myE-Verify"(www.uscis.gov/mye-verify) for employees to create and maintain secure personal accounts and access new features for identity protection. Unlike E-verify for some employers, myE-Verify is entirely voluntary. It allows employees to access Self-Check and Employee Rights Toolkit and to have a "self-lock" system that prevents unauthorized Page 2202 access to their Social Security and other identity information
4. **E-Verify (RIDE)**—USCIS has initiated a program that enables E-Verify to confirm information from drivers' licenses and state identification from a state DMV when the state department of motor vehicles has entered into an MOU with USCIS. Privacy Impact Assessment Update for the E-Verify RIDE, DHS-PIA-030(b) (May 6, 2011), AILA Doc. No. 11051635. As of December 2017, ten states (Arizona, Florida, Idaho, Iowa, Maryland, Mississippi, Nebraska, North Dakota, Wisconsin, and Wyoming) have joined. See www.uscis.gov/e-verify/employers/drivers-license-verification for updated information.

E-Verify Employer Obligations

1. Query for every new hire within 3 days of hire
2. Maintain Confirmation Number on I-9 Form
3. Provide Employee with Required Notices and time frames to remedy Tentative Non Confirmations
4. Notify USCIS of Decisions on Final Non Confirmations
5. Comply with Federal Contractor Provisions if Federal Contractor
6. Review State laws and comply with state E-Verify Requirements

State E-Verify Laws

- **ALL EMPLOYERS**
  - Alabama
  - Arizona
  - Georgia
  - Mississippi
  - North Carolina
  - South Carolina
  - Tennessee
  - Utah
- **STATE CONTRACTORS/ Public Employers**
  - Colorado
  - Idaho
  - Indiana
  - Florida
  - Nebraska
  - Minnesota
  - Missouri
- **STATES with Local E-Verify Rules**
  - New York
  - Oregon
  - Washington
  - Michigan
  - CA has a law forbidding localities from requiring E-Verify

Immigration Related Employment Discrimination

1. Who is Covered

a. Citizens or Nationals of the United States—INA §274B(a)(3)(A) [8 USC §1324b(a)(3)(A)], including naturalized USCs

b. LPR Who Are Not Yet Eligible for Naturalization, Refugees, Asylees, Residents Who Apply for Naturalization Within 6 Months of Must apply for naturalization within 6 months of eligibility to be a protected person. And must thereafter become naturalized within 2 years or be actively pursuing it to be protected. INA §274B(a)(3)(B) [8 USC §1324b(a)(3)(B)], 28 CFR §§44.101(k)(1) and (2).

c. Persons who are Employment Authorized Subject to National Origin Discrimination or Document Abuse—A person who is not a "protected" individual under the INA may still initiate a charge if he or she is employment authorized and subject to national origin discrimination, document abuse based upon national origin discrimination, or retaliation.

Immigration Related Employment Discrimination

2. What is Prohibited?

a. **National Origin/Citizenship Status Discrimination** against an employee because of national origin or citizenship in hiring, recruitment, referral for a fee or discharge. INA §274B(a);

b. **Retaliation**— against intimidation or retaliation against those who file charges or assert rights under the Act. INA §274B(a)(5); 2 8 CFR §44.200(a)(2); 52 FR 37402 (Oct. 6, 1987).

c. **Document Abuse; Unfair Documentary Practices**—The Act covers situations where the employer, in the I-9 verification (or E-verify) process, asks for more or different documents than required, or refuses to accept documents which are genuine on their face with the intent to discriminate based upon protected status. INA §274B(a)(6) [8 USC §1324b(a)(6)], 2 8 CFR §44.200(a)(3)

Immigration Related Employment Discrimination

3. Recent Case Examples

a. Document Abuse: Palm Beach County School District paid $100,000 in Civil fines for requiring green cards and work permits in the I-9 process (11/16/2020).

b. Citizenship Status/Document Abuse: Logistics company in Texas requested Asylee to provide a specific document during the I-9 process – then terminated him when he could not provide it. Undisclosed civil penalty and back pay award (11/12/2020

c. Citizenship Status Discrimination: IT Staffing company in Maryland posted a job advertisement aimed exclusively at non-U.S. citizens with certain temporary visas, including H-1B visas and F-1 student visas. Fined and required to retrain employees.

d. “The Civil Rights Division’s Immigrant and Employee Rights Section (IER) has reached numerous settlements under the Protecting U.S. Workers Initiative, and employers have distributed or agreed to pay a combined total of more than $1.2 million in back pay to affected U.S. workers and civil penalties to the United States. These settlements involve employers that discriminated in their use of the H-1B, H-2A, H-2B and F-1 visa programs.”

F-1 STEM OPT Compliance 8 CFR §214.2(f)(10)(ii)

1. The STEM practical training opportunity must be directly related to the degree that qualifies the F-1 for such extension, 8 CFR §214.2(f)(10)(ii)(C)(4);
2. The employer must have an EIN and be enrolled in E-Verify; 8 CFR §214.2(f)(10)(ii)(C)(5); 81 FR 13081-83;
3. The student and employer must sign the I-983 (Training Plan for STEM OPT Students), 8 CFR §214.2(f)(10)(ii)(C)(10); 81 FR at 13090-98 and agree to report the student's departure when known or if the student has not reported for 5 consecutive business days;
4. The terms and conditions of employment including duties, hours (not less than 20 per week), and compensation, which must be commensurate with similarly situated U.S. workers, 8 CFR §214.2(f)(10)(ii)(C)(8).

F-1 STEM OPT Compliance 8 CFR §214.2(f)(10)(ii)

5. The student must submit self-evaluations: an initial self-evaluation within 12 months of the STEM OPT start date, a final evaluation at the end of the 24-month period, 8 CFR §214.2(f)(10)(ii)(C)(9)(i), and at the end of any employment that terminates outside the 12 and 24-month windows. If there are material changes in the plan a modified I-983 must be filed signed by the student and the employer, 8 CFR §214.2(f)(10)(ii)(C)(9)(ii);
6. The employer must attest in the I-983 that he has sufficient resources to train the student; that the student will not replace a U.S. worker; and that opportunity assists the student in reaching his training goals; and
7. DHS may conduct employer site visits [usually with 48 hours' notice], 8 CFR §214.2(f)(10)(ii)(C)(11); 81 FR at 13042, 13064-66, 13079; SEVIS, Broadcast Message: Overview of STEM OPT Employer Site Visits (Feb. 14, 2020)

H-1B Compliance

1. Labor Condition Application (LCA) Requirement 20 CFR §655.700(a)(3).
2. Attestations on the LCA
   a. Employer is paying the higher of the actual or prevailing wage as stated in the LCA INA §212(n)(1)(A); 20 CFR §655.731(a).
   b. Working Conditions not adversely affect other workers similarly employed. Working conditions commonly refers to matters "including hours, shifts, vacation periods, and fringe benefits." 20 CFR §655.732(b).
   c. No Strike or Lockout 20 CFR §655.733(a)(1).
   d. Notice of LCA—bargaining representative if any, or post notice that an LCA has been filed; also must provide a copy to the H-1B worker
3. Public Access File Requirement; 20 CFR §655.760(a).

L-1 Compliance

1. Employment is Managerial/Executive in Nature
   a. INA §101(a)(44)(A) [8 USC §1101(a)(44)(A)]; 8 CFR §214.2(l)(1)(ii)(B)
   b. Manages the organization, department, subdivision, function, or component;
   c. Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization or department or subdivision of the organization;
   d. Has authority to hire and fire or recommend personnel actions (if other employees directly supervised), or if no direct supervision, functions at a senior level within hierarchy or as to function managed; and
   e. Exercises discretion over day-to-day operations of the activity or function.

L-1 Compliance

2. Employee has Specialized Knowledge
   a. "special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company." 8 USC §1184(c)(2)(B), INA §214(c)(2)(B)
   b. Special knowledge is knowledge which is "distinct or uncommon in comparison to that generally found in the particular industry"
   c. Advanced knowledge is knowledge or expertise not commonly found in the relevant industry and is "greatly developed or further along in progress, complexity and understanding than that generally found within the employer."

Immigration Compliance Site Visits

1. The site visit may occur at the employer's principal place of employment and/or at the worksite location, as indicated on the Immigration Petition or Training Plan
2. Site visits are usually an hour or less in duration and the employer may request that its immigration counsel be present during the visit.
3. Often the FDNS will request to speak with the person that signed the petition/training plan or the employer representative. This is often the HR Manager or VP.
4. Immigration officers will also want to speak with the foreign national: If at all possible, that employee should speak with the FDNS with another employee present to serve as a witness.
5. The FDNS will verify the information on the petition through direct or indirect questions and document review.
6. The FDNS has the right to ask to review the employer's tax records, quarterly wage reports, other documentation of bona fide operation, a copy of the beneficiary's most recent pay statement and/or W-2; training plan, company and self-evaluations
7. Training and notification of employers is key: Negative Results can lead to Notice of Intention to Revoke Status.

Corporate Response to Large Scale Investigations

1. **Implement a diverse legal team** to develop a strategic plan to respond and cooperate with the investigation. Depending upon which agency is investigating, the team should include attorneys **with federal agency litigation**, **white collar crime**, **E-discovery**, **immigration**, **employment, labor and securities law** expertise. Having a diverse team early on will help companies craft long term strategies that show good faith with compliance issues and the investigation itself, while still protecting the company and leadership from criminal and civil liability.

Corporate Response to Large Scale Investigations

2. **Respond quickly to practices perceived as problematic by the government**. Be **proactive** about correcting I-9s with mistakes and **terminating undocumented employees**. Doing so will be looked upon favorably by the government and not as a confirmation of guilt. Review your Public Access Files and correct them, before turning them over to the government. A company's demonstrated effort to comply with immigration and other regulations as well as to change company policies when necessary is always a helpful factor when entering into settlement negotiations with the government and when litigating the amount of potential fines and penalties in administrative and federal court.

Corporate Response to Large Scale Investigations

3. **Internal corporate communications matter.** Having an **immigration compliance policy** is imperative. Making improvements to the policy and **communicating those to employees**, is even more imperative during an investigation. Company emails have been used as evidence of criminal conspiracies to hire and provide I-9 documentation to undocumented workers; to show a company's complete disregard and lack of understanding of the need for immigration compliance; to show a **pattern and practice** of document abuse and citizenship status discrimination in the I-9 context.

Corporate Response to Large Scale Investigations

4. **I-9 Investigations are sometimes only the tip of the iceberg**. Companies under I-9 investigation should be on notice that other much larger and more treacherous investigations may be looming. This leads to several recommendations: Cooperate during the I-9 audit. **Admit and correct mistakes early**. Review all other internal immigration processes, before the government does. **Assess I-9 and other immigration liability at the outset**, so a sound legal strategy can be developed with the appropriate level of defense and cooperation.

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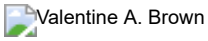
Questions?

vbrown@duanemorris.com (215) 979-1840

BYLINED ARTICLES

Immigration Worksite Enforcement Continues in Spite of Pandemic

By Valentine A. Brown
November 18, 2020
The Legal Intelligencer



Valentine A. Brown

Immigration enforcement activities have continued apace in spite of the unprecedented changes wrought on U.S. employers due to the coronavirus pandemic. Any U.S. employer, even those without foreign nationals on staff, may be subject to immigration-related compliance audits. Recent enforcement activities have included I-9 audits, Department of Labor (DOL) investigations, citizenship status discrimination investigations, I-9 document abuse investigations and Department of Justice (DOJ) civil suits alleging improper favor of temporary foreign workers over U.S. workers. Less punitive, but more common, are random and unannounced site visits by immigration officers at worksites employing H-1B temporary workers; L-1 multinational managers, executives and specialized-knowledge workers; and F-1 foreign student on STEM Optional Practical Training (OPT).

The current administration's focus on legal immigration and its emphasis on "Buy American, Hire American" policies has led to a significant increase in site visits. Site visits can occur prior to the approval of an H or L visa petition or any time after it has been approved. Site visits in the STEM OPT program can occur any time during the two-year duration of the F-1 student's work authorization. Site visits are conducted by immigration officers or contractors, often retired Department of Homeland Security or law enforcement personnel. The purpose of a site visit is to provide the government with the opportunity to verify information that was provided by the employer in support of the immigration application.

H-visa worker investigations involve a review of the job location, office space, paystubs, salary information, schedule of employment and other factors to confirm that the employment is bona fide and is actually occurring as it was described on the employer's H-visa petition. There is often a follow-up request by the investigator for additional documentation. Failure of the employee to meet the basic H-visa requirements can lead to a revocation of the previously approved application.

The considerations for L-1 site visits are similar to the H-visa; however, there is less focus on wages and more on the job description and duties of the foreign national worker. STEM OPT site visits focus on confirmation of the elements of the training plan that was submitted by the employer and the student prior to the approval of the work authorization document. Training plans require regular supervision, periodic evaluations and meeting of milestones that should be maintained and documented throughout the student's employment.

There are several areas where attorneys can assist employers in preparing for site visits. Attorneys should assist employers in drafting a written plan and procedure as to what an employer should do when an immigration officer visits a worksite unannounced. A comprehensive plan will ensure that the employer's first response to the immigration audit is helpful and remains within the employer's control. The plan should include training for front desk and human resources personnel, as well as ensure the immigration officer is never allowed to tour the premises or talk with employees unaccompanied. Compliance with immigration record-keeping requirements is also imperative, and having readily available, complete records will assist employers in responding to documentation requests during site visits.

In recent months, immigration officers have been reaching out by email to conduct site visits and requesting interviews with foreign national workers. Through email and telephone, as well as by providing significant documentation, it is possible to satisfy the immigration officer's requirements without an actual visit to the worksite.

Immigration officers are also willing to conduct interviews by telephone of employees and their supervisors; however, preparation of the interviewees should be conducted to ensure that they do not inadvertently provide too much or unhelpful information to the government investigator.

Employers of H-visa workers, including H-2A agricultural workers, H-2B seasonal workers and H-1B specialty occupation workers, are subject to DOL audits regarding the wages and working conditions of these workers as well as their American counterparts. While DOL audits are rare, they are usually precipitated by a DOL complaint filed by an American worker or an H-visa holder. These audits often will lead to onsite investigations, significant fines and back pay awards. Employers undertaking sponsorship of an H-visa worker must be fully apprised of the required wages and working condition requirements before agreeing to the sponsorship.

There has been a surge in I-9 audits under the current administration, from 1,370 in 2017 to 6,456 in 2019. There also has been a correlative increase in the number of arrests resulting from I-9 audits, including undocumented workers or those using false identity documents. Based upon the administration's budget requests, continued increases in I-9 audits are likely.

I-9 audits in the region have been continuing throughout the coronavirus pandemic. Local Immigration and Customs Enforcement officers have been accommodating to employers who have had difficulty in gathering required documentation due to the remote work environment and nonavailability of many aspects of their businesses. Immigration officers have also been accommodating in allowing extensions of timelines to respond to I-9 audits, as well as subsequent requests for corrections and employer investigations of employment documents that the agency finds to be suspect. Requests for extensions should be reasonable. Normally an additional 30 days is approved, and often additional extensions will be granted as long as the employer or counsel keep the government officials apprised of progress in responding to the audit requests.

Upon receipt of an I-9 audit request, employers, under the direction and advice of counsel, should conduct an internal audit to review and correct existing I-9 forms as well as replace missing I-9 forms with newly completed ones. The primary consideration for this endeavor is that employers must not backdate new I-9s or corrections. Once the I-9 forms are delivered to the government, they will be reviewed for legal work authorization status of each employee, discrepancies in identity documents and errors on the I-9 forms. Immigration enforcement officers are most interested in employers' good faith efforts to comply, even if those efforts contain technical or substantive errors.

Employers are not expected to be document fraud experts; however, when the government uncovers an undocumented worker through the I-9 audit process, it will issue a notice of suspect documents. Employers must take immediate and decisive action to investigate the immigration status of those workers and terminate them if they are unable to provide proper documentation to demonstrate legal work authorization. Even employers who are found to have undocumented workers on staff will not always be fined by immigration officials, especially if they have shown good faith in completing the I-9 forms and in reviewing documentation provided by the employees.

There has also been an uptick in immigration-related employment discrimination investigations by the DOJ. These investigations are precipitated most often by a worker complaint or by the findings of an I-9 or DOL audit. Triggering events could include discriminatory language in employment advertising, refusal to hire persons based upon their citizenship status or national origin, or specific documentary requirements during the I-9 process.

Investigations by the DOJ are thorough and onerous. They are normally settled, but only after extensive disruption to the employer's business and the extraction of significant fines, penalties and detailed, invasive settlement terms. They include repeated and consistent training over a multiyear period; compliance policy reviews and rewrites; DOJ monitoring; and multiyear I-9 audits by the Department of Homeland Security. Employers are also subject to back pay awards and will often be required to set up a fund so that any workers who were rejected from employment for illegal reasons will have access to back pay awards as they come forward.

Employers and their attorneys must stay vigilant. Immigration compliance is complex, tedious and ever changing. Planning ahead with robust policies, regular training and strong record keeping is key.

Valentine A. Brown *is a partner at Duane Morris in the employment, labor, benefits and immigration practice group. She represents corporations and individuals in all types of immigration laws and proceedings.*

The Infosys Settlement: Lessons for Corporations and Their Counsel

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Body

The Infosys Settlement: Lessons for Corporations and Their Counsel

By Valentine Brown[*]

Introduction

The recent $34 million settlement of the case brought against Infosys Corporation by the United States Attorney's Office in the Eastern District of Texas is a mirror, reflecting the entire panoply of immigration issues and positions now under constant debate and scrutiny in the United States. What is reflected depends upon who is looking. The U.S. Attorney's office and Department of Justice see an *Indian* corporation that has committed visa fraud by using B-1 visa holders to perform skilled labor that should have been done by U.S. citizens or H-1B visa holders. Immigration attorneys with experience in representing technology companies with offices in India and elsewhere outside the United States see a company utilizing the B-1 visa under standard industry practice and under permissible circumstances set out in the Foreign Affairs Manual. Immigration restrictionists see yet another example

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[*] **Valentine A. Brown** is a partner at Duane Morris LLP in the Employment, Labor, Benefits and Immigration Practice Group. She serves as global immigration law counsel to a diverse group of multi-national and domestic corporations and their employees, providing advice, compliance audits and representation to help navigate the intricacies of US and foreign immigration laws. Ms. Brown also represents individuals in all types of immigration proceedings, including persons of extraordinary ability; spouses, fiancées and children of US citizens; naturalization and political asylum applicants; as well as respondents in deportation and immigration appellate proceedings.

of the misuse of visas to undercut American workers, and secretly applaud the timing of the announcement as it will be more fodder for the grist mill of anti-immigration rhetoric. Comprehensive immigration reformists see yet another example of how our broken immigration system with its lack of sufficient H-1B visas, lack of short-term employment visa options, and unclear rules, has snared another large corporation into a huge fine, allowing the agencies involved to further fund more such investigations in the future. Whatever the reader's point of view, there are many lessons for attorneys and corporate immigration compliance officers to learn from the case. This article will review the allegations against Infosys, the company's responses and what concrete steps can be taken in the wake of this case to protect corporate clients and improve their immigration compliance.

The Allegations and Settlement

In a complaint filed in the Eastern District of Texas on October 30, 2013, the Department of Justice accused Infosys of ``systemic visa fraud and abuse of immigration processes.''[1] The factual allegations against the company were the following:

1. Infosys submitted B-1 invitation letters that contained false representations regarding the true purpose of the proposed travel.
2. Infosys provided a ``Do's and Don'ts'' memorandum to employees who would be attending B-1 interviews. According to the government, this memorandum constituted instructions on how to deceive consular officials.
3. Infosys advised H-1B employees to tell consular officials that their destination was the same as that listed on the LCA, when the company and the employee knew the destination had changed.
4. Infosys revised client contracts to exclude the names of individual workers assigned to the contract in order to conceal the fact that B-1 workers would be assigned to work on the contract.
5. Infosys altered its client billing practices to conceal the use of B-1 visitors on contracts by listing B-1 visitors as ``off shore'' resources and billing in multiples of the lower off-shore rate, rather than billing them out at the higher on-shore rate.
6. Infosys used B-1 visa holders to work in the United States.
7 Infosys failed to properly maintain its I-9 records during 2010 and 2011. Violations included a systemic failure to do necessary reverifications, and multiple other substantive and technical violations.

The Government charged Infosys under *31 U.S.C. § 3729(a)(1)(A)*. This provision creates civil liability for any entity that presents a false or fraudulent claim to the United States for payment or approval. Damages range from $5000-$10,000 per act plus three times the amount of damages the government suffers because of the act. Under the statute, the term ``claim'' is defined as ``any request, whether under a contract or otherwise, for money or property. that is made to an officer, employee or agent, of the United States.'' 8 U.S.C. § 3729(b)(2). The question of the applicability of this provision to immigration matters did not deter Infosys from settling with the government. The settlement agreement and the payment of the $34 million were also completed on October 30, the same day the complaint was filed.[2]

The allocation of the settlement monies also leaves more questions than answers: $5 million to Homeland Security Investigations for I-9 violations; $5 million to the Department of State for visa violations and $ 24 million to the US Attorney's office in the Eastern District of Texas. Out of the total, Jack Palmer, an Infosys employee and

[1] The complaint is available at *https://dl.dropboxusercontent.com/u/27924754/infosys%20-%20complaint%20*(filed)%20(1).pdf or Lexis.com > Get A Document > By Party Name > Federal Docket.

[2] The settlement agreement is available at *https://dl.dropboxusercontent.com/u/27924754/infosys%20-%20settlement%20agreement%20*(filed)%20(1).pdf or Lexis.com > Get a Document > By Party Name > Federal Dockets.

whistleblower, received an undisclosed payment of between 15% and 25%. In spite of the settlement agreement's explicit statement that each party will be responsible for its own legal fees, the amounts and allocation seem much closer to a repayment of the government for its costs of conducting the 2.5 year investigation than to any civil penalty for the alleged violations.

Infosys's Response

In the settlement agreement, Infosys denied and disputed all of the allegations listed above, except for number seven, to which it agreed that it had committed I-9 violations and agreed to cease and desist. According to the settlement agreement, Infosys joined E-verify in 2010 and began using an electronic I-9 provider in 2011. In the settlement, the company also agreed to retain at its own expense an independent third-party I-9 auditor to conduct an audit of 4% of the company's I-9s on an annual basis and prepare a report for the U.S. Attorney for the Eastern District of Texas for the next two years.

In responding to the allegation regarding LCA violations and instructions given to H-1B applicants regarding how to answer questions about the location of their assignment, Infosys issued a flat denial in the settlement agreement, but did confirm that it had added more controls to strengthen its LCA compliance.

Infosys addressed the alleged B-1 visa fraud and abuse of process allegations in several ways: First, it issued denials. Second, it discontinued several of the disfavored processes. Third, it put into place a robust B-1 monitoring program.

In denying the allegations that it misused the B-1 visa, Infosys stated that its use of the B-1 visa was legitimate and not intended to circumvent H-1B program requirements. It relied upon the four preeminent controlling principles of the B-1 visa: (1) the business activity must be international in scope (2) the source of remuneration, principal place of business and place of profit accrual must be outside the United States; (3) the employee must have a foreign residence abroad and (4) the entry into the United States must be temporary. Infosys relied upon the Foreign Affairs Manual to confirm that the allowable activities under a B-1 visa are much broader than what the Department of Justice recognized in its complaint, and stated that even ``coding and programming'' are legitimate B-1 activities in certain circumstances.[3]

The company also defended the level of detail in its invitation letters, stating that it was appropriate for the process and consistent with common practice in the industry. It similarly defended the use of its ``Do's and Don'ts'' memorandum by citing the common use of such recommendations to business travelers in other companies and by U.S. government agencies that sponsor B-1 travel. In the settlement agreement, the company states that all client contract changes were made to meet Infosys' internal guidelines, and that any changes in billing practices were approved by clients. The company confirmed that none of these actions were undertaken with the intent to deceive consular officers or the U.S. government regarding the activities of Infosys' B-1 visitors.

To further address the government's allegations, Infosys discontinued use of its ``Do's and Don'ts'' memorandum in 2011 during the first year of the investigation and agreed as a term of the settlement to stop using non-specific invitation letters for B-1 applications

Infosys also instituted unspecified new policies and procedures to ensure that LCA information was maintained up to date at all stages of the H-1B process. The centerpiece of Infosys' response to the allegations was a new B-1 compliance policy for the company. The basic elements of the B-1 policy are set out in the settlement agreement:

- Strict limits on the duration of any one B-1 trip;
- Strict limits on the total number of days any one employee may spend in the US on a B-1 visa in a given year;
- Restrictions on which employees may travel on B-1;

[3] 9 FAM 41.31 N11.

- Training of employees and managers on the B-1 Travel Policy;
- New requirements for invitation letters;
- Certification requirements for Employees engaging in B-1 travel regarding the nature of the travel;
- Certification requirements for Managers requesting B-1 travel of employees regarding the nature of the travel;
- Certification requirements of Managers involved in the immigration process.

The terms of the settlement agreement also included an agreement by Infosys to allow any materials obtained by the government during the investigation to be used by the State Department and DHS for training purposes, as well as a requirement to report on its progress one year after the settlement. The government also reserved the right to randomly sample Infosys' B-1 submission documents for 2 years after the settlement. Potential violations under Title 26 of the U.S. Code covering IRS violations were specifically excluded from the agreement, leaving open the possibility that Infosys could face additional prosecution for the tax implications of not treating the offending B-1 visitors as employees, among other things.

Lessons Learned

When the government decides to investigate, develop a strategic plan to cooperate with the investigation as much as possible. Infosys was lauded in the settlement agreement by the government for its cooperation.

Internal corporate communications matter. The Infosys ``Do's and Don'ts'' memorandum was a golden ticket for the government, seeming to provide it with evidence that the entire company was in a conspiracy to defraud the B-1 process. The memo was so detrimental, that Infosys stopped using it early on in the investigation. Immigration compliance has moved to the center of the government's radar screen. Internal communications, policies and practices must fully align with a spirit of respect and compliance for the immigration laws.

Respond quickly to practices perceived as problematic by the government. As discussed in this article, Infosys made many of the changes to its processes in 2011, during the first year of the investigation. Rather than waiting until the government had made its final determination, Infosys responded to the government throughout the investigation. The length of time the changes had been in place at the time of the settlement was also considered as part of Infosys' compliance.

There is no such defense as too big to comply. Companies, no matter how large, and no matter how rogue the employees may be, are responsible. It is clear that before the investigation, Infosys as a company, could not and did not know what every division, project, manager or employee was doing or saying during the B-1 process. Yet the company was charged with, and accepted responsibility for, each and every B-1 action made by one of its employees. To combat this problem going forward, Infosys created a B-1 policy to allow the company to control the actions made on its behalf, including requiring signed certifications and severe penalties for non-compliance.

When setting up an in-house immigration function, consider the location carefully. The case against Infosys was brought in the Eastern District of Texas because the company's immigration function was housed in Plano, Texas. Local legal precedent as well as the reputation and zealousness of the US Attorney's office located in a particular district may be worth considering. Large investigations, such as the one against Infosys, may also implicate state immigration, employment and tax laws.

I-9 investigations are sometimes the tip of the iceberg. The Infosys investigation for the government began with a whistleblower complaint, but for Infosys, it began with an I-9 audit and snowballed into something much larger. Companies under I-9 investigation should be on notice that other much larger and more treacherous investigations may be looming. This leads to several recommendations: Cooperate during the I-9 audit. Admit and correct mistakes early. Review all other internal immigration processes, before the government does. Assess I-9 and other immigration liability at the outset so that a sound legal strategy can be developed with the appropriate level of

defense and cooperation. When problems are identified, be proactive in developing strategies to ameliorate the damage and prevent them in the future.

Independent I-9 audits are respected by the government and especially helpful for large companies. Hiring an independent I-9 auditor to do an annual random sample audit will be a significant piece of a company's good faith compliance affirmative defense. If following this recommendation, companies must affirmatively respond to any findings in the audit, and quickly implement any recommended changes, including required training and process changes. Be sure to document everything.

LCA compliance monitoring is more difficult, but more important than ever. H-1B and LCA violations are now within the sights of the Department of Justice, as well as the Department of Labor. Neither the fast pace of business, nor the size of company will immunize it from liability for LCA violations. Set up internal LCA compliance monitoring programs that require manager certifications and hold them accountable for failures. Encourage a corporate culture of compliance rather than avoidance.

B-1 program monitoring is now a required component of a comprehensive immigration compliance program. The elements of the program designed by Infosys create an excellent roadmap for advocates and companies to follow. Programs should have the flexibility to meet business needs, but sufficient controls to discourage and punish illegal usage of the visa, as well as mechanisms to alert the company when problems are in the nascent stage.

Conclusion

There is a treasure trove of new work for immigration attorneys stemming from the lessons learned in the Infosys settlement: Reviews of corporate immigration communications; creation and monitoring of B-1 compliance policies and procedures; and LCA audits and policies among others. While immigration attorneys have sounded the drum on complete compliance for years, there has been minimal response from corporate clients. Perhaps the high profile nature of the company involved this time, the sheer breadth of the investigation and the record-breaking size of the settlement will turn some corporate heads giving attorneys a new opportunity to make the case for compliance.

End of Document

Handbook for Employers M-274

Guidance for Completing Form I-9 (Employment Eligibility Verification Form) | Current as of April 2020

How to Download Our Manuals in PDF (PDF)

Last Reviewed/Updated Date 11/24/2020

1.0 Why Employers Must Verify Employment Authorization and Identity of New Employees

In 1986, Congress reformed U.S. immigration laws to preserve the tradition of legal immigration while seeking to close the door to illegal entry. The employer sanctions provisions, found in section 274A of the Immigration and Nationality Act (INA), were added by the Immigration Reform and Control Act of 1986 (IRCA). These provisions further changed with the passage of the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.

Employment is often the magnet that attracts people to reside in the United States illegally. The purpose of the employer sanctions law is to remove this magnet by requiring employers to hire only individuals who may legally work here: U.S. citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work. To comply with the law, employers must:

- Verify the identity and employment authorization of each person they hire;
- Complete and retain a Form I-9, Employment Eligibility Verification, for each employee; and
- Refrain from discriminating against individuals on the basis of national origin or citizenship.

At the same time that it created employer sanctions, Congress also prohibited employment discrimination based on citizenship, immigration status, and national origin. This part of the law is referred to as the anti-discrimination provisions. See Section 10.0, Unlawful Discrimination and Penalties for Prohibited Practices, for more information on unlawful discrimination.

This handbook will tell you how to properly complete Form I-9, which helps you verify that your employees are authorized to work in the United States. You must complete a Form I-9 for every new employee you hire after Nov. 6, 1986, as well as new employees hired in the Commonwealth of the Northern Mariana Islands (CNMI) on or after Nov. 28, 2009. This includes U. S. citizens and noncitizen nationals who are automatically eligible for employment in the United States.

You can download Form I-9 (PDF) (PDF, 726.73 KB) and the instructions (PDF, 585.48 KB) on the USCIS website at uscis.gov/i-9-central. You may also order paper forms at uscis.gov/forms/forms-by-mail or by calling the USCIS Contact Center at 800-375-5283 (TTY: 800-767-1833). You must use the current version of Form I-9 found at uscis.gov/i-9. A revision date with an “N” next to it indicates that all previous versions with earlier revision dates are no longer valid.

Form I-9 is available in English and Spanish. Employers in the United States and its territories may use the Spanish version of Form I-9 as a translation guide for Spanish-speaking employees, but must complete and retain the English version. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9.

1.1 The Homeland Security Act

The Homeland Security Act of 2002 created an executive department combining numerous federal agencies with a mission dedicated to homeland security. On March 1, 2003, the authorities of the former Immigration and Naturalization Service (INS) were transferred to three new agencies in the U.S. Department of Homeland Security (DHS):

- U.S. Citizenship and Immigration Services (USCIS);
- U.S. Customs and Border Protection (CBP); and
- U.S. Immigration and Customs Enforcement (ICE).

The two DHS immigration components most involved with the matters discussed in this handbook are USCIS and ICE. USCIS issues most alien employment authorization documentation and also administers Form I-9 and E-Verify, the electronic employment eligibility verification program. ICE enforces the penalty provisions of section 274A of the INA as well as other immigration requirements within the United States.

Under the Homeland Security Act, the U.S. Department of Justice (DOJ) retained certain important responsibilities related to Form I-9 as well. In particular, the Immigrant and Employee Rights Section (IER) in the Department of Justice’s Civil Rights Division enforces the anti-discrimination provision in section 274B of the INA, while the Executive Office for Immigration Review (EOIR) administratively adjudicates cases under sections 274A, 274B, and 274C (civil document fraud) of the INA.

1.2 E-Verify: The Web-Based Verification Companion to Form I-9

Form I-9 has been the foundation of the verification process since 1986, when employers began verifying the employment authorization and identity of new hires under IRCA. To improve the accuracy and integrity of this process, USCIS operates an electronic employment eligibility confirmation system called E-Verify.

E-Verify is a web-based system that allows employers and other participants to confirm the eligibility of their newly hired employees to work in the U.S. by electronically matching information on the employee’s Form I-9 against records available to the Social Security Administration and DHS. E-Verify is free and is available to participants in all 50 states, as well as the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Employers who participate in E-Verify still must complete Form I-9 for each newly hired employee in the United States. E-Verify participants may accept any combination of documents from the Lists of Acceptable Documents on Form I-9, but if the employee chooses to present a List B and C combination, the List B (identity only) document must have a photograph.

If you participate in E-Verify, after completing a Form I-9 for your new employee, you must create a case in E-Verify that includes information from Sections 1 and 2 of the employee’s Form I-9. After creating the case, you will receive a response from E-Verify regarding the employment authorization of the employee. In some cases, E-Verify will provide a response indicating a Tentative Nonconfirmation (TNC). This does not necessarily mean the employee is unauthorized to work in the United States. Rather, it means that E-Verify is unable to immediately confirm the employee’s authorization to work. In the case of a TNC, you must notify the employee. If the

employee wishes to take action to resolve a TNC result, the employee should contact the appropriate agency (DHS and/or the Social Security Administration) within the prescribed time period stated in the Referral Date Confirmation that you will provide to the employee, and as described in the E-Verify User Manual.

When using E-Verify, participating employers must also follow certain procedures that were designed to protect employees from unfair employment actions:

- You must use E-Verify for all new hires, both U.S. citizens and noncitizens, and may not use the system selectively.
- You may not use E-Verify to prescreen applicants for employment, check employees hired before you became a participant in E-Verify (except contractors with a federal contract that requires use of E-Verify), or reverify employees who have temporary employment authorization.
- You may not terminate or take other adverse action against an employee based on a TNC.

E-Verify strengthens the Form I-9 employment eligibility verification process that all employers, by law, must follow. By adding E-Verify to the existing Form I-9 process, participants can benefit from knowing that they have taken an additional constructive step toward maintaining a legal workforce.

For more information about E-Verify, including enrollment, visit e-verify.gov or contact E-Verify at 888-464-4218.

Federal Contractors

On Nov. 14, 2008, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued a final rule amending the Federal Acquisition Regulation (FAR) (FAR case 2007-013, Employment Eligibility Verification). The regulation requires contractors with a federal contract that contains a FAR E-Verify clause to use E-Verify for their new hires and all employees (existing and new) assigned to the contract. Federal contracts issued on or after Sept. 8, 2009, as well as older contracts that have been modified may contain the FAR E-Verify clause.

Federal contractors who have a federal contract that contains the FAR E-Verify clause must follow special rules when completing and updating Form I-9. For more information, please see the E-Verify Supplemental Guide for Federal Contractors available at e-verify.gov.

2.0 Who Must Complete Form I-9

You must complete Form I-9 each time you hire any person to perform labor or services in the United States in return for wages or other remuneration. Remuneration is anything of value given in exchange for labor or services, including food and lodging. The requirement to complete Form I-9 applies to new employees hired in the United States after Nov. 6, 1986, as well as new employees hired in the Commonwealth of the Northern Mariana Islands (CNMI) on or after Nov. 28, 2009.

Ensure the employee completes Section 1 of Form I-9 at the time of hire. “Hire” means the beginning of employment in exchange for wages or other remuneration. The time of hire is noted on the form as the first day of employment. Employees may complete Section 1 before the time of hire, but not before the employer extends the job offer and the employee accepts. Review the employee’s document(s) and fully complete Section 2 within three business days of the hire. For example, if the employee begins employment on Monday, you must complete Section 2 by Thursday.

You may designate, hire, or contract with any person you choose to complete, update or make corrections to Section 2 or 3 on your behalf. This person is known as your authorized representative. The authorized representative must perform all the employer duties described in this handbook, and complete, sign and date Section 2 or 3 on your behalf. You are liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws, committed by your authorized representative.

Employees cannot act as authorized representatives for their own Form I-9. Therefore, employees cannot complete, update or make corrections to Section 2 or 3 for themselves or attest to the authenticity of the documentation they present.

If an employee will work for less than three business days, Sections 1 and 2 must be fully completed at the time of hire (in other words, by the first day of employment).

Do not complete Form I-9 for employees who are:

- Hired on or before Nov. 6, 1986 (or on or before Nov. 27, 2009, in the CNMI), who are continuing in their employment and have a reasonable expectation of employment at all times;
- Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
- Independent contractors;
- Employed by a contractor providing contract services (such as employee leasing or temporary agencies) and are providing labor to you; or
- Not physically working on U.S. soil.

If you are self-employed, you do not need to complete Form I-9 on your own behalf unless you are an employee of a separate business entity, such as a corporation or partnership. In that case, you and any other employees must complete Form I-9.

Note: *You cannot hire an individual who you know is not authorized to work in the United States.*

3.0 Completing Section 1 of Form I-9

Have the employee complete Section 1 at the time of hire (by the first day the employee starts work for pay) by entering the correct information, and signing and dating the form. If the employee enters the information by hand, ensure the employee prints clearly.

A preparer and/or translator may help the employee complete Section 1. You are responsible for reviewing the information and ensuring employees (and their preparer/translators, if applicable) fully and properly completed Section 1.

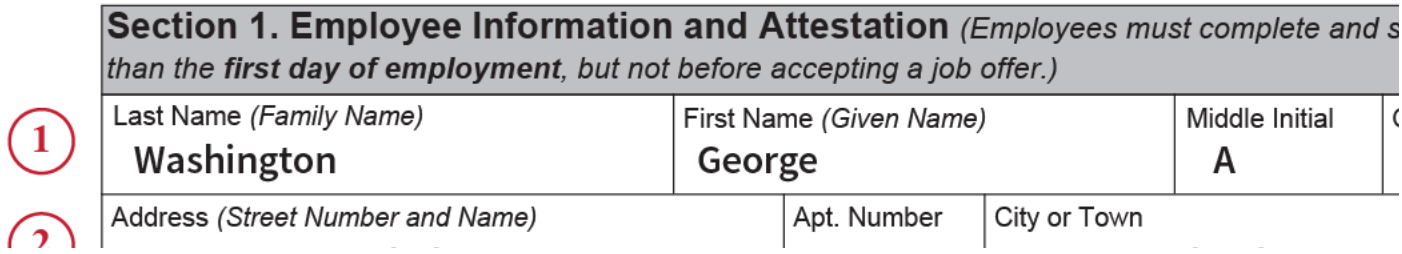


Figure 1: Completing Section 1: Employee Information and Attestation

Employees must enter their full legal name and other last names that they have used in the past or present (such as a maiden name) if any.

- Employees with two last names (family names) must include both in the Last Name field. If your employee's name includes a hyphen or apostrophe, include it. Examples of correctly entered last names include De La Cruz, O'Neill, Garcia Lopez, and Smith-Johnson.
- Employees with only one name should enter it in the Last Name field and enter "Unknown" in the First Name field. Employees cannot enter "Unknown" in both the Last Name and the First Name fields.
- Employees with two first names (given names) should include both in the First Name field. If your employee's name includes a hyphen or apostrophe, include it. Examples of correctly entered first names include Mary Jo, John-Paul, Tae Young, and D'Shaun.
- Employees must enter their middle initial in the Middle Initial field. Enter "N/A" if the employee does not have a middle initial.

- Employees must enter their maiden name or any other legal last name they may have used in the Other Last Names Used field. Enter “N/A” if the employee has not used other last names.

Employees should enter their home address, apartment number, city or town, state and ZIP code. Employees who have no apartment number should enter “N/A” in that field. Employees who do not have a street address should enter a description of the location of their residence, such as “Two miles south of I-81, near the water tower.” Employees should enter their date of birth as a two-digit month, two-digit day, and four-digit year (mm/dd/yyyy) in this field. For example, Jan. 8, 1980, should be entered as 01/08/1980.

Employees may voluntarily provide their Social Security number, or leave this field blank. However, if you are enrolled in E-Verify, your employees must provide their Social Security number.

Employees who have not yet received their Social Security number and who can satisfy Form I-9 requirements may work while awaiting their Social Security number. Have them enter their Social Security number in Section 1 as soon as they receive it.

You cannot ask employees to provide a specific document with their Social Security number on it. To do so may constitute unlawful discrimination. For more information on E-Verify, see Section 1.2, E-Verify: The Web-Based Verification Companion to Form I-9. For more information on unlawful discrimination, see Section 10.0, Unlawful Discrimination and Penalties for Prohibited Practices.

Employees are not required to provide an email address or telephone number in Section 1. If they provide an email address, ensure it is in the name@site.domain format. If they do not wish to enter an e-mail address or telephone number, they should enter “N/A” in these fields.

Employees must read the warning about penalties under federal law and attest to their citizenship or immigration status by checking one of the following boxes on the form:

1. **A citizen of the United States.**
2. **A noncitizen national of the United States**: An individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.
3. **A lawful permanent resident**: This specific immigration status describes an individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This term includes conditional residents. Asylees and refugees should not select this status, but should instead select “An alien authorized to work.” Employees who select this box should enter their seven- to nine-digit Alien Registration Number (A-Number) or USCIS Number in the space provided. The USCIS Number is the same as the A-Number without the “A” prefix.
4. **An alien authorized to work**: An individual who is not a citizen or national of the United States, or a lawful permanent resident, but is authorized to work in the United States. For example, asylees, refugees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau should select this status.

Employees must sign and date the form, entering the date in Section 1 as a two-digit month, two-digit day, and four-digit year (mm/dd/yyyy).

If the employee used a preparer and/or translator to complete the form, the preparer and/or translator must certify that such person helped the employee by completing the Preparer and/or Translator Certification block. If the employee did not use a preparer and/or translator, have the employee check the box marked “I did not use a preparer or translator.” If the employee used one or multiple preparers or translators and is completing the paper Form I-9, print the Form I-9 Supplement (PDF), Section 1, Preparer and/or Translator Certification. If the employee used one or multiple preparers and/or translators and is completing Form I-9 using a computer, check the second box marked “A preparer(s) and/or translator(s) assisted the employee in completing Section 1” and select the number of preparers or translators the employee used in the drop down box next to “How Many?”

You must ensure that all parts of Form I-9 are properly completed; otherwise, you may be subject to penalties under federal law. The employee must complete Section 1 no later than the employee’s first day of employment. You may not ask an individual who has not accepted a job offer to complete Section 1. Before completing Section 2, you should review Section 1 to ensure the employee completed it properly. Review any possible errors with the employee. Have the employee correct any confirmed errors, add the employee’s initials, and the date the employee made the correction.

4.0 Completing Section 2 of Form I-9

Within three business days of the date employment begins, the employee must present an original document or documents (or an acceptable receipt) to you or your authorized representative that shows the employee’s identity and employment authorization. For example, if an employee begins employment on Monday, you must review the employee’s documentation and complete Section 2 on or before Thursday of that week. However, if you hire someone for less than three business days, you must complete Section 2 no later than the first day of employment. You must allow the employee to choose which document(s) the employee will present from the Form I-9 Lists of Acceptable Documents. You cannot specify which document(s) an employee will present from the list.

Physically examine each original document from the employee to determine if the document reasonably appears to be genuine and relates to the person presenting it. You or your authorized representative must examine these documents in the physical presence of the employee presenting them. Examine one document selected from List A or a combination of one document selected from List B and one document selected from List C. If an employee presents a List A document, do not ask or require the employee to present List B or List C documents. If an employee presents List B and List C documents, do not ask or require the employee to present a List A document. If you participate in E-Verify, and the employee presents a combination of List B and List C documents, then the List B document must contain a photograph. For more information, visit e-verify.gov (PDF).

Certain Social Security cards are restricted and not acceptable List C documents if the card contains:

- VALID FOR WORK ONLY WITH DHS AUTHORIZATION
- NOT VALID FOR EMPLOYMENT
- VALID FOR WORK ONLY WITH INS AUTHORIZATION

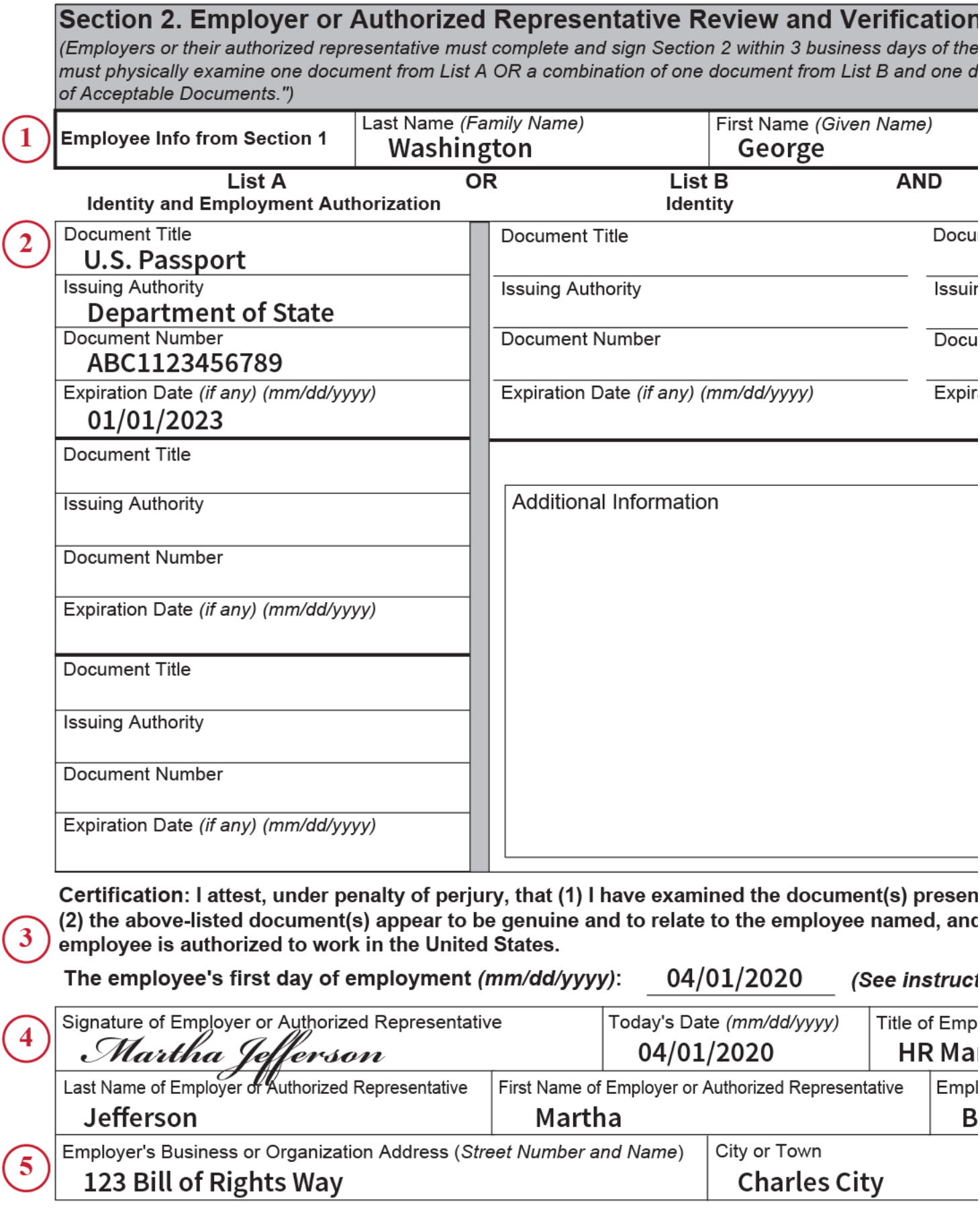
If your employee presents a restricted Social Security card, ask the employee to provide a different document from List C or a document from List A.

You must accept any document(s) from the Lists of Acceptable Documents that reasonably appear to be genuine and to relate to the person presenting them. You may terminate an employee who fails to present an acceptable document or documents (or an acceptable receipt for a document) within three business days of the date employment begins. If you fail to properly complete Form I-9, you risk violating section 274A of the INA and are subject to civil money penalties.

Enter the document title, issuing authority, document number, and expiration date (if any) in Section 2 using information from the original documents the employee presented. If you choose to make copies of the documents, you must do so for all employees, regardless of national origin or citizenship status, or you may violate anti-discrimination laws. However, if you participate in E-Verify and the employee presents a U.S. passport, passport card, Permanent Resident Card (also called a Green Card) or Employment Authorization Card, you must retain a copy of it with Form I-9. Return the original documents to your employee. The same person who examined the employee’s documents must also complete the fields in the certification block

, then sign and date Section 2, as shown in the figures below.

Figure 2: Section 2: Employer or Authorized Representative Review and Verification



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the
must physically examine one document from List A OR a combination of one document from List B and one d
of Acceptable Documents.")

1

Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*
	Washington	George

List A	OR	List B	AND
Identity and Employment Authorization		Identity	

2

List A	List B
Document Title: U.S. Passport	Document Title
Issuing Authority: Department of State	Issuing Authority
Document Number: ABC1123456789	Document Number
Expiration Date *(if any) (mm/dd/yyyy)*: 01/01/2023	Expiration Date *(if any) (mm/dd/yyyy)*
Document Title	Additional Information
Issuing Authority	
Document Number	
Expiration Date *(if any) (mm/dd/yyyy)*	
Document Title	
Issuing Authority	
Document Number	
Expiration Date *(if any) (mm/dd/yyyy)*	

3

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presen
(2) the above-listed document(s) appear to be genuine and to relate to the employee named, and
employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: 04/01/2020 ***(See instruct***

4

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Emp
Martha Jefferson	04/01/2020	HR Ma

Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Empl
Jefferson	Martha	B

5

Employer's Business or Organization Address (*Street Number and Name*)	City or Town
123 Bill of Rights Way	Charles City

At the top of Section 2, enter the employee's last name, first name, and middle initial exactly as it appears in Section 1. Enter the number that correlates with the citizenship or immigration status box the employee selected in Section 1.

Enter the document title, issuing authority, document number, and the expiration date from the original documents the employee presented. You may use either common abbreviations for the document title or issuing authority, for example, "DL" for driver's license and "SSA" for Social Security Administration, or the suggestions in the form instructions.

The "Additional Information" space is for Form I-9 notes, such as:

- Notations that describe extensions of employment authorization or a document's expiration date for individuals in certain nonimmigrant categories or granted Temporary Protected Status (TPS). For more information, see Section 4.4, Automatic Extensions of Employment Authorization Documents (EADs) in Certain Circumstances, and Section 6, Evidence of Status for Certain Categories.
- Information from additional documents that F-1 or J-1 nonimmigrant employees may present including the Student and Exchange Visitor (SEVIS) number and the program end date from Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, or DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, as required.
- Replacement document information if a receipt was previously presented.
- Discrepancies that E-Verify participants must notate when participating in the IMAGE program.
- Any other optional comments or notations necessary for your business process, such as employee termination dates, form retention dates, and E-Verify case verification numbers.

Enter the first day of employment for wages or other remuneration in the space for "The employee's first day of employment (mm/dd/yyyy)." Recruiters and referrers for a fee do not enter the employee's first day of employment.

Staffing agencies may choose to use either the date an employee is assigned to the employee's first job or the date the new employee is entered into the assignment pool as the first day of employment.

The employer or authorized representative signs and dates Section 2 in the spaces provided to attest to physically examining the documents the employee presented. Also enter title, last name, first name, and the employer's business or organization name.

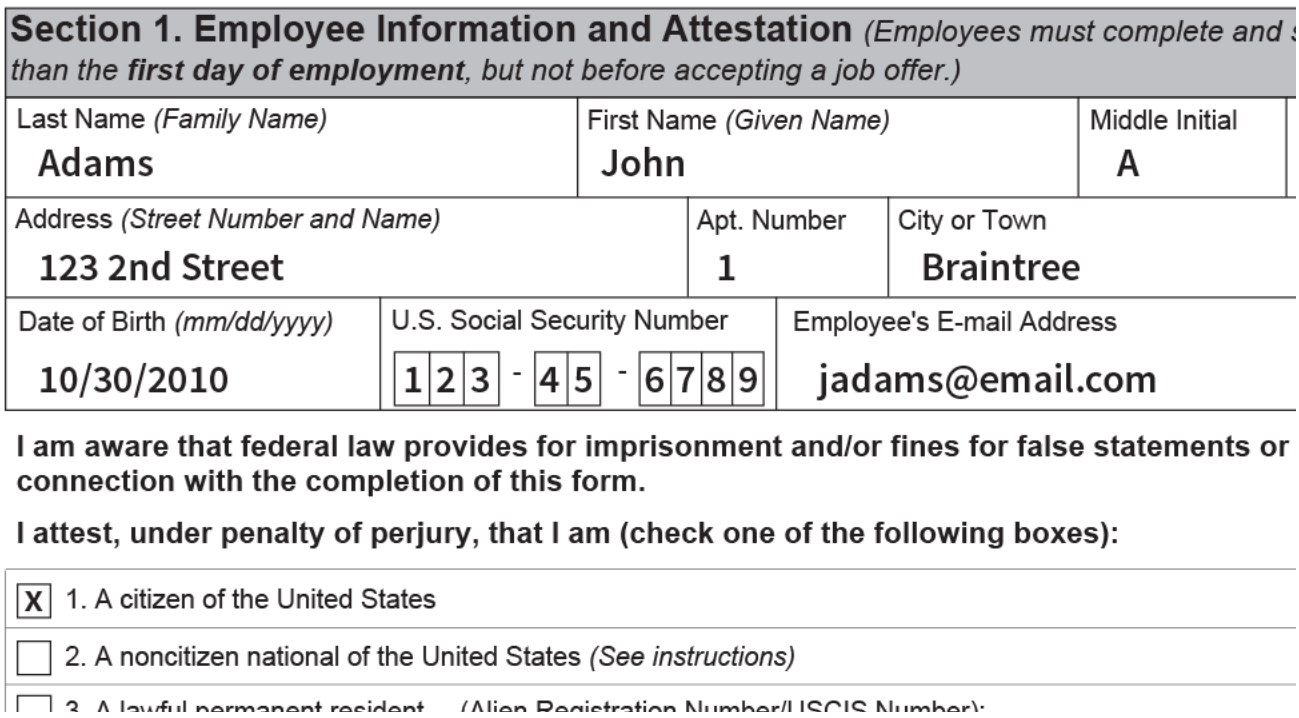
Enter the business's street address, city or town, state and ZIP code.

4.1 Minors (Individuals under Age 18)

Minors can complete Form I-9 as described in Section 4.0, Completing Section 2 of Form I-9, by presenting a List A document or a combination of List B and C documents. If a minor is unable to present an identity document from List B, a parent or legal guardian may establish identity for the minor by completing Form I-9 as shown in Figure 3.

E-Verify Note: If you participate in E-Verify, parents or legal guardians cannot establish identity for a minor as described above. The minor must present either a List A document, or a combination of a List B document that contains a photograph and a List C document.

Figure 3: Completing Section 1 of Form I-9 for minors without List B documents



Section 1. Employee Information and Attestation *(Employees must complete and s*
than the ***first day of employment****, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial
Adams	John	A

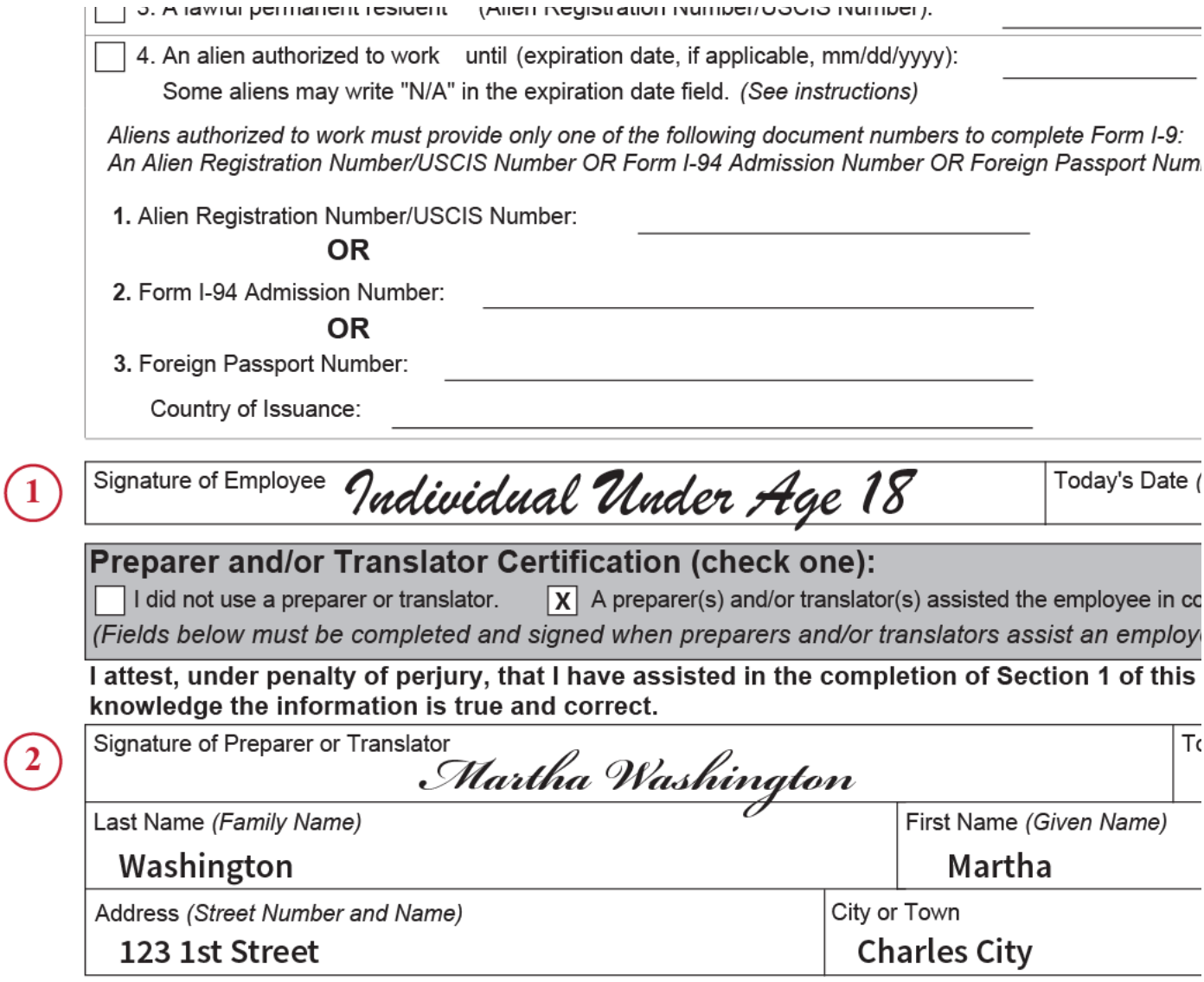
Address *(Street Number and Name)*	Apt. Number	City or Town
123 2nd Street	1	Braintree

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address
10/30/2010	123 - 45 - 6789	jadams@email.com

I am aware that federal law provides for imprisonment and/or fines for false statements or connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

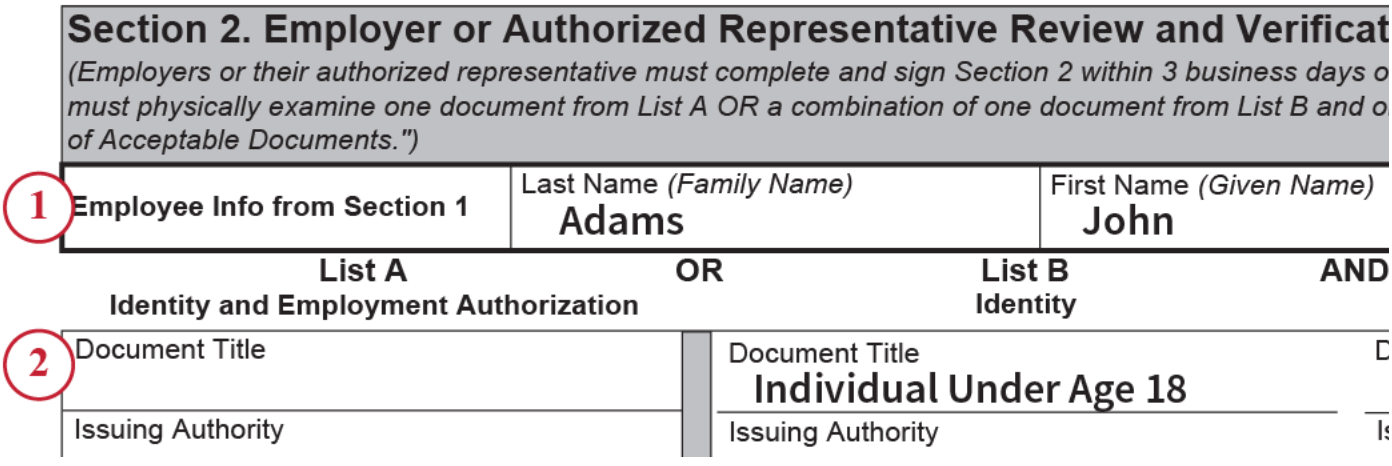
- [X] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States *(See instructions)*
- [ ] 3. A lawful permanent resident (Alien Registration Number/USCIS Number):



The minor's parent or legal guardian completes Section 1 and enters "Individual under age 18" in the signature block.

The parent or legal guardian completes the Preparer and/or Translator Certification block.

Figure 4: Completing Section 2 of Form I-9 for minors without List B documents



Document Number	Document Number
Expiration Date *(if any) (mm/dd/yyyy)*	Expiration Date *(if any) (mm/dd/yyyy)*
Document Title	
Issuing Authority	Additional Information
Document Number	
Expiration Date *(if any) (mm/dd/yyyy)*	
Document Title	
Issuing Authority	
Document Number	
Expiration Date *(if any) (mm/dd/yyyy)*	

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) pre (2) the above-listed document(s) appear to be genuine and to relate to the employee named, employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: 04/01/2020 ***(See inst***

Signature of Employer or Authorized Representative *Susan Anthony*	Today's Date *(mm/dd/yyyy)* 04/01/2020	Title of HR
Last Name of Employer or Authorized Representative Anthony	First Name of Employer or Authorized Representative Susan	
Employer's Business or Organization Address (*Street Number and Name*) 50 States Road	City or Town Braintree	

At the top of Section 2, enter the employee's last name, first name, and middle initial exactly as it appears in Section 1. Enter the number that correlates with the citizenship or immigration status box the employee selected in Section 1.
Enter "Individual under age 18" under List B and enter the document title, issuing authority, document number, and expiration date (if any) using information from the original List C document the minor presented.
Enter the date employment began.

The employer or authorized representative signs and dates Section 2 in the spaces provided to attest to physically examining the documents the employee presented. Also enter title, last name, first name, and the employer's business or organization name.
Enter the business's street address, city or town, state and ZIP code.

4.2 Employees with Disabilities (Special Placement)

Certain employees may have a physical or mental impairment which substantially limits one or more of their major life activities and are placed in jobs by a nonprofit organization, association, or as part of a rehabilitation program. Employees in this category who present a List A document or a combination of List B and C documents must complete Form I-9 as described in Section 4.0, Completing Section 2 of Form I-9. If these employees are unable to present a List B document, they may establish identity under List B similar to minors, as shown in Figure 5. These employees must still present a List C document.

E-Verify Note: If you participate in E-Verify, representatives of a nonprofit organization, association, or rehabilitation program; parents; and legal guardians cannot establish identity for an employee with disabilities as described above. This employee must present either a List A document , or a combination of a List B document that contains a photograph and a List C document.

Figure 5: Completing Section 1 of Form I-9 for Employees with Disabilities (Special Placement)

Section 1. Employee Information and Attestation *(Employees must complete and s*
than the ***first day of employment****, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial
Jefferson	Thomas	A

Address *(Street Number and Name)*	Apt. Number	City or Town
123 Bald Eagle Circle	2	Shadwell

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address
04/13/1983	123 - 45 - 6789	tjefferson@email.com

I am aware that federal law provides for imprisonment and/or fines for false statements or connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

- [X] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States *(See instructions)*
- [ ] 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- [ ] 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
  Some aliens may write "N/A" in the expiration date field. *(See instructions)*

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Num

1. Alien Registration Number/USCIS Number: _____
OR
2. Form I-94 Admission Number: _____
OR
3. Foreign Passport Number: _____
Country of Issuance: _____

(1) Signature of Employee *Special Placement* | Today's Date (

Preparer and/or Translator Certification (check one):

- [ ] I did not use a preparer or translator.
- [X] A preparer(s) and/or translator(s) assisted the employee in cc

(Fields below must be completed and signed when preparers and/or translators assist an employ

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this knowledge the information is true and correct.

(2) Signature of Preparer or Translator *Martha Washington* | To

Last Name *(Family Name)*	First Name *(Given Name)*
Washington	Martha

Address *(Street Number and Name)*	City or Town
123 American Flag Blvd	Chestnut Grove

1 - The representative of the nonprofit organization, association, or rehabilitation program; or the parent or legal guardian of the employee with a disability completes Section 1 and enters “Special Placement” in the Signature of Employee field and dates the form.

2 - The same representative, parent, or legal guardian completes the Preparer and/or Translator Certification block.

Figure 6: Completing Section 2 of Form I-9 for Employees with Disabilities (Special Placement)

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the emp must physically examine one document from List A OR a combination of one document from List B and one docun of Acceptable Documents.")

1

Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*	M.
	Adams	John	A

List A Identity and Employment Authorization	OR	List B Identity	AND

2

Document Title		Document Title	Document
		Special Placement	Socia
Issuing Authority		Issuing Authority	Issuing Au
			Socia
Document Number		Document Number	Document
			123-4
Expiration Date *(if any) (mm/dd/yyyy)*		Expiration Date *(if any) (mm/dd/yyyy)*	Expiration
			N/A
Document Title			
Issuing Authority			
Document Number			
Expiration Date *(if any) (mm/dd/yyyy)*			
Document Title			
Issuing Authority			
Document Number			
Expiration Date *(if any) (mm/dd/yyyy)*			

Additional Information

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented b (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) employee is authorized to work in the United States.

3 **The employee's first day of employment *(mm/dd/yyyy)*:** 04/01/2020 ***(See instructions***

4

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer
Abigail Adams	04/01/2020	HR Chief
Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer'
Adams	Abigail	Bald

5

Employer's Business or Organization Address (*Street Number and Name*)	City or Town
1 We The People Way	Weymouth

1 - At the top of Section 2, enter the employee's last name, first name, and middle initial exactly as it appears in Section 1. Enter the number that correlates with the citizenship or immigration status box the employee selected in Section 1.

2 - Enter "Special Placement" under List B and enter information about the List C document that the employee presents.

3 - Enter the date employment began.

4 - The employer or authorized representative signs and dates Section 2 in the spaces provided to attest to physically examining the documents the employee presented. Also enter title, last name, first name, and employer's business or organization name.

5 - Enter the business's street address, city or town, state and ZIP code.

4.3 Acceptable Receipts

You must accept a receipt in place of a List A, B, or C document if the employee presents one, unless employment will last less than three business days. New employees who choose to present a receipt must do so within three business days of their first day of employment.

Table 1 provides a list of acceptable receipts an employee can show. Enter the word "Receipt" followed by the title of the document in Section 2 under the list that relates to the receipt. When completing the form using a computer, scroll down in the appropriate list to select the receipt presented.

When your employee presents the original replacement document, cross out the word "Receipt," then enter the information from the new document into the Additional Information field in Section 2.

Table 1: Acceptable Receipts

Description of Receipt	Who may present this receipt?	Is this a List A, B, or C document?	How long is this receipt valid for Form I-9 purposes?	What document must the employee show at the end of the receipt validity period?
The departure portion of a Form I-94, Arrival/Departure Record, with an unexpired refugee admission stamp or admission code of "RE."	Refugees	List A	90 days from date of hire or, for reverification, 90 days from the date employment authorization expires.	An unexpired Employment Authorization Document (Form I-766), or a combination of a valid List B document and an unrestricted Social Security card.
The arrival portion of a Form I-94, Arrival/Departure Record, containing a temporary I-551 stamp and photograph.	Lawful permanent residents	List A	Until the expiration date of the temporary I-551 stamp, or if there is no expiration date, one year from date of admission.	The actual Form I-551, Permanent Resident Card, also known as a "Green Card."
A document that shows an employee applied to replace a lost, stolen, or damaged document.	All employees	Can be List A, B, or C, depending on which document the receipt relates to.	90 days from date of hire or, for reverification, 90 days from the date employment authorization expires.	The actual document for which the receipt was issued.

4.4 Automatic Extensions of Employment Authorization Documents (EADs) in Certain Circumstances

Automatic Extensions Based on a Timely Filed Application to Renew Employment Authorization and/or Employment Authorization Document

Foreign nationals in certain employment eligibility categories who file Form I-765, Application for Employment Authorization, to renew their EADs may receive automatic extensions of their expiring EAD for up to 180 days. The extension begins on the date the EAD expires and continues for up to 180 days, unless USCIS denies the renewal application. An automatic EAD extension depends on these requirements:

- Employees must have filed an application to renew their EAD before it expires (except certain employees with Temporary Protected Status (TPS)), and the application remains pending;
- The eligibility category on the front of the EAD is the same eligibility category on the employee's Form I-797C, Notice of Action (except employees with TPS who may have a C19/A12 combination); and
- Current EAD eligibility categories for a 180-day automatic extension are A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31, and A12 or C19. The eligible categories are published on the USCIS Automatic EAD Extension page. Some category codes on the EAD may include the letter 'P' such as C09P. Employers should disregard the letter 'P' when comparing the category code on the EAD with the category code on the receipt notice.

An EAD that appears to be expired is automatically extended when the employee also presents a Form I-797C that shows a timely filed EAD renewal application. The EAD and Form I-797C must have the same qualifying eligibility category as that on the expired EAD. See below for information on TPS-based EAD auto-extensions that may not require Form I-797C, Notice of Action.

To find the eligibility category on your employee's EAD, see Figure 7 below:

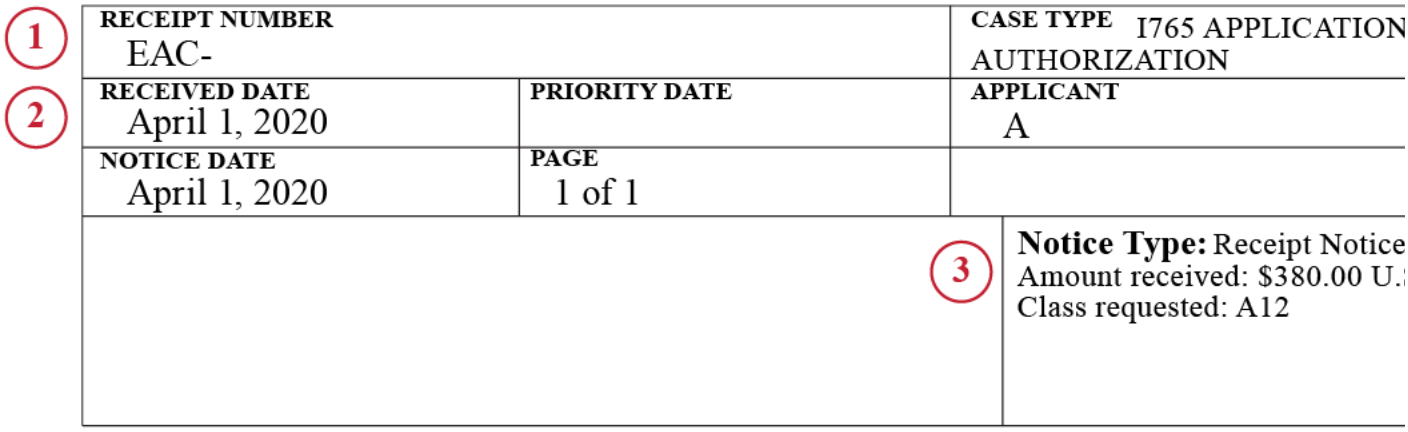
Figure 7: Auto-Extended Employment Authorization Documents

Finding the Category and Expiration Date on an EAD (Form I-766)

The eligibility category appears on the EAD under Category.

The expiration date appears to the right of Card Expires.

Finding the Auto-Extended EAD Expiration Date on the I-797C: Sample 1



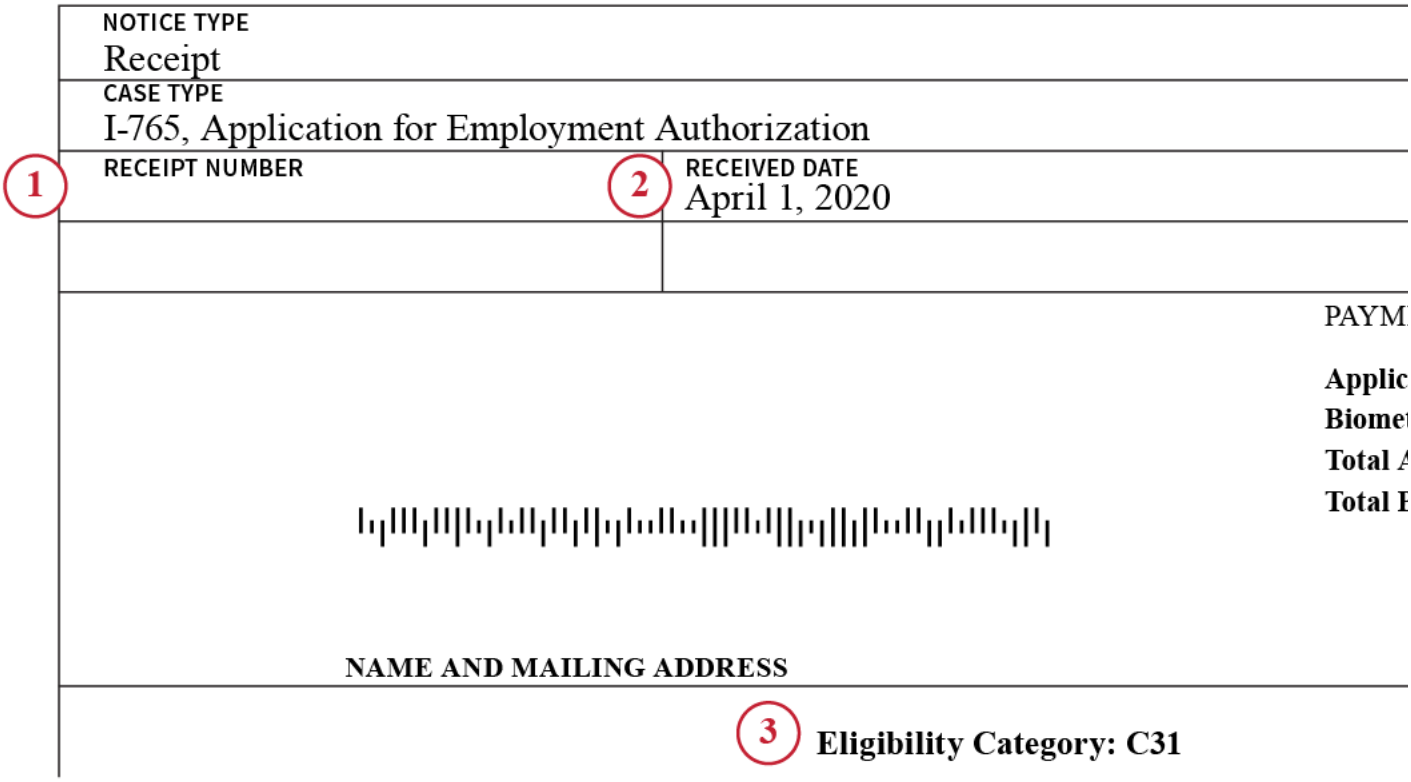
1 **RECEIPT NUMBER** EAC-		**CASE TYPE** I765 APPLICATION AUTHORIZATION
2 **RECEIVED DATE** April 1, 2020	**PRIORITY DATE**	**APPLICANT** A
NOTICE DATE April 1, 2020	**PAGE** 1 of 1	
	3	**Notice Type:** Receipt Notice Amount received: $380.00 U. Class requested: A12

The receipt number appears on Form I-797C, Notice of Action, in the Receipt Number field.

The filing date (the date USCIS received the application) appears in the Received Date field. Except as explained below for TPS beneficiaries, this date should be on or before the “Card Expires” date on the EAD

The category may appear on Form I-797C in the Class Requested field. If you do not see this field, see Sample 2 below.

Finding the Auto-Extended EAD Expiration Date on the I-797C: Sample 2



The receipt number appears on Form I-797C in the Receipt Number field.

The filing date (the date USCIS received the application) appears in the Received Date field. This date should be on or before the "Card Expires" date on the EAD.

The category may appear on Form I-797C in the Eligible Category field.

How to Complete Form I-9 for EADs Extended by I-797C

New employees presenting an EAD that has been automatically extended must complete Section 1 as follows:

- Select "An alien authorized to work until;" and
- Enter the date that is 180 days from the "Card Expires" date on their EAD as their expiration date.

Employees whose status does not expire, such as refugees or asylees, should enter N/A as the expiration date.

In Section 2, the employer must:

- Enter EAD in the Document Title field.
- Enter the receipt number from Form I-797C in the Document Number field.
- In the Expiration Date field, enter the date 180 days from the "Card Expires" date on the EAD. This expiration date may be cut short if USCIS denies the employee's renewal application before the 180-day period expires.
- Enter EAD EXT in the Additional Information field.

For a current employee, employers must update the Additional Information field in Section 2 when the employee's EAD has been automatically extended. Employers should enter EAD EXT and the 180-day auto-extended date in the Additional Information field in Section 2. For example, EAD EXT mm/dd/yyyy.

Federal Register Notice Automatic EAD Extensions for TPS Beneficiaries

DHS also may extend the expiration date of a TPS beneficiary's EAD by Federal Register notice. The notice provides an extension of the EAD expiration date based on the EAD "Card Expires" date and the category code of A12 or C19 that your employee presents for Form I-9. These notices provide instructions for completing or updating Form I-9. You may not require employees to prove they are a national of a country that DHS has designated for TPS.

TPS beneficiaries are not required to present a Form I-797C confirming that they reregistered for TPS. However, please refer to the Federal Register notice for additional guidance to determine if employees need to confirm that they applied for a new EAD.

For TPS EAD extension information, visit USCIS TPS or I-9 Central TPS.

How to Complete Form I-9 for EADs Extended by Federal Register Notices

In Section 1, new employees presenting an EAD automatically extended by a Federal Register notice must:

- Select “An alien authorized to work until;” and
- Enter the EAD automatic extension date provided in the appropriate Federal Register notice as the expiration date. Employers can find a link to each TPS country’s Federal Register notice on the USCIS TPS webpage.

In Section 2, the employer must:

- Enter EAD in the Document Title field.
- Enter the document number from the EAD with Category A12 or C19.
- Enter the automatic extension date provided in the Federal Register notice as the document expiration date.

For a current employee, employers must update the Additional Information field in Section 2 when the employee’s EAD has been automatically extended. Enter EAD EXT and the EAD automatic extension date from the Federal Register notice in the Additional Information field in Section 2. For example, EAD EXT mm/dd/yyyy.

Reverification

You must reverify employees when their automatic extension ends, no later than the date their work authorization expires. You can reverify them before the automatic extension ends if they present any document that shows current employment authorization, such as any document from List A or C.

5.0 Completing Section 3 of Form I-9

5.1 Reverifying Employment Authorization for Current Employees

You must reverify an employee’s employment authorization no later than the date employment authorization expires. The employee must present a document that shows current employment authorization, such as any document from List A or C, including an unrestricted Social Security card. You must reject a restricted Social Security card and ask the employee to provide a different document from List A or C. You can also accept certain receipts for reverification; see the Acceptable Receipts table in Section 4.3, Acceptable Receipts, for more information. You cannot continue employing a person who does not provide proof of current employment authorization.

Complete Section 3 of the employee’s original Form I-9. If you already used Section 3 for a previous reverification or update, use Section 3 of a new Form I-9. You must also complete Section 3 of a new Form I-9 if the form you used for the previous verification is no longer valid. Please check uscis.gov/i-9 for the current Form I-9.

If you reverify your employee using a paper Form I-9:

- Enter the employee’s full name from the original Form I-9 at the top of Section 2.
- Leave both the Citizenship/Immigration Status field and the rest of Section 2 blank.
- If the employee’s name has changed, enter the new name in Block A of Section 3.
- Enter the document title, number and expiration date in Block C of Section 3.
- Sign, date and enter your name in Section 3. Keep this page with the original.

If you complete Section 3 using a computer:

- Enter the employee’s full name from the original Form I-9 at the top of Section 3.
- If the employee’s name has changed, enter the new name in Block A.
- Enter the document title, number and expiration date (if any) in Block C.
- Enter your name in the field provided.
- Print the form. Sections 2 and 3 will print on the same page: The employee’s name will show at the top of Section 2, the rest of Section 2 is left blank, and Section 3 will show your entries.
- Sign and date Section 3.
- Keep this page with the original Form I-9.

Reverification is never required for U.S. citizens or noncitizen nationals. Reverification is also never required when the following documents expire: U.S. passports, U.S. passport cards, Form I-551 (Alien Registration Receipt Cards/Permanent Resident Cards, which are also known as Green Cards), and List B documents.

Employees with expiring immigration status, employment authorization, or employment authorization documents should have the necessary application or petition filed well in advance to ensure they maintain continuous employment authorization and/or valid documents. USCIS provides employment authorization extensions under certain conditions. See Section 6.0, Evidence of Status for Certain Categories, for more information.

5.2 Reverifying or Updating Employment Authorization for Rehired Employees

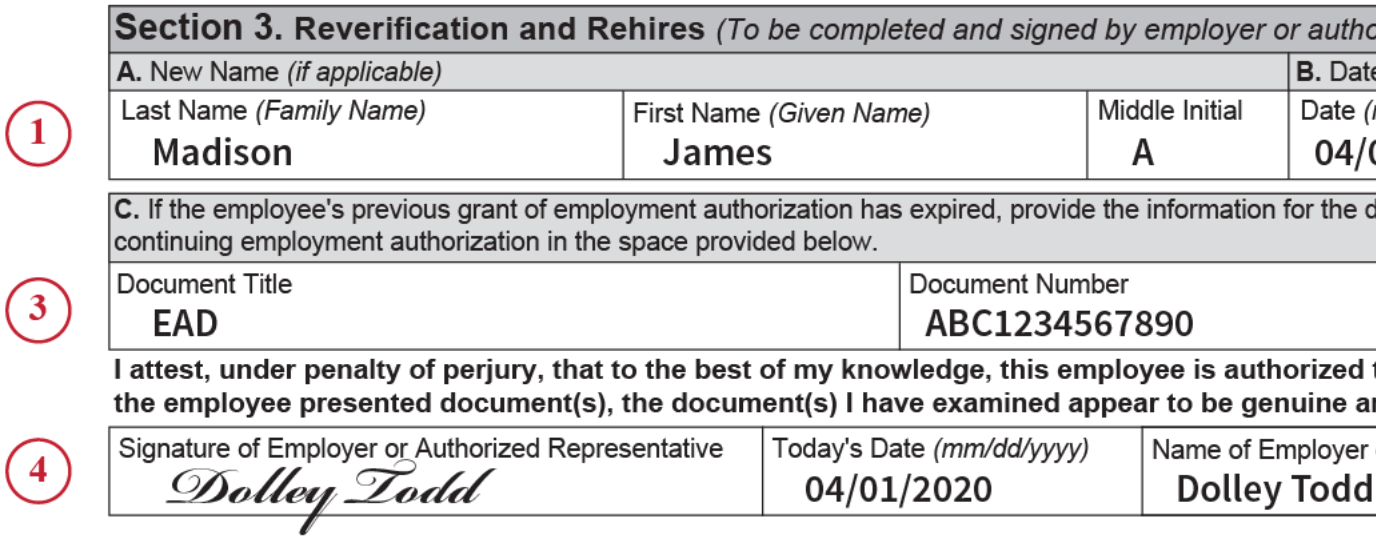
If you rehire employees within three years from the date you completed their previous Form I-9, you may either use that form or complete a new one. If you choose to use their previous form, follow these guidelines to complete Section 3:

- If they are still authorized to work, they do not need to provide any additional documents. This includes U.S. citizens, noncitizen nationals, and lawful permanent residents who presented a Form I-551. For these employees, you must:
  - Enter the employee’s full name from the original Form I-9 at the top of Section 3.
  - Enter any name change in Block A.
  - Enter their rehire date in Block B.
  - Enter your name and sign and date Section 3.

- If their employment authorization has expired, you must:
  - Enter the employee’s full name from the original Form I-9 at the top of Section 3.
  - Enter any name change in Block A.
  - Enter the rehire date in Block B.
  - Reverify their employment authorization in Block C.
  - Enter your name and sign and date Section 3.

- If the previous Form I-9 is an old version of the form, you must complete Section 3 on the current version of the form. Please check uscis.gov/i-9 for the current Form I-9.
- If you already used Section 3 of the employee’s previous Form I-9, but are rehiring them within three years of the original Form I-9, complete Section 3 on a new Form I-9 and attach it to the previously completed form.
- Employees rehired three years after you originally completed their Form I-9 must complete a new Form I-9.

Figure 8: Completing Section 3: Reverification and Rehires



Section 3. Reverification and Rehires *(To be completed and signed by employer or autho*

A. New Name *(if applicable)* | **B.** Date

1

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Date *(*
Madison	James	A	04/(

C. If the employee's previous grant of employment authorization has expired, provide the information for the d continuing employment authorization in the space provided below.

3

Document Title	Document Number
EAD	ABC1234567890

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized t the employee presented document(s), the document(s) I have examined appear to be genuine a

4

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Name of Employer
Dolley Todd	04/01/2020	Dolley Todd

- Enter the employee's new name, if applicable, in Block A.
- Enter the employee's date of rehire, if applicable, in Block B
- Enter the List A or C document title, number, and expiration date (if any) in Block C
- Sign and date Section 3.

Note: *If you need to reverify the employment authorization of an existing employee who completed an earlier version of Form I-9, the employee may choose any List A or C document(s) from the Lists of Acceptable Documents for the most current version of Form I-9. Enter the new document(s) information in Section 3 of the current version of Form I-9 and keep it with the previously completed Form I-9. Visit uscis.gov/i-9 for the most current version of Form I-9.*

5.3 Recording Changes of Name and Other Identity Information for Current Employees

During reverification or rehire, if an employee has had a legal name change (such as by getting married), you must enter their new legal name in Block A of Section 3, as shown in Sections 5.1 and 5.2. If they legally changed their name at any other time, we recommend you update Block A as soon as you learn of the change, so that you maintain correct information on the form.

To enter a legal name change in Section 3 without reverification or rehire:

- Enter the employee's new name in Block A.
- Enter your name and sign and date Section 3.

In either situation, you should take steps to ensure the employee's name change is accurate. This may include asking them to provide legal documentation showing the name change, such as a marriage certificate. Make a copy of that document to keep with Form I-9 in the event of an inspection.

You may encounter situations other than a legal name change where an employee informs you (or you have reason to believe) that their identity is different from what they used to complete their Form I-9. For example, an employee may have been working under a false identity, has subsequently obtained work authorization in their true identity, and wishes to regularize their employment records. In that case, you should complete a new Form I-9. Write the original hire date in Section 2 and attach the new Form I-9 to the previously completed Form I-9 and include a written explanation.

In cases where an employee has worked for you using a false identity but is currently authorized to work, Form I-9 rules do not require termination of employment.

In addition, there may be other laws, contractual obligations, or company policies that you should consider before taking action. For example, the INA prohibits discrimination based on citizenship status and national origin. See Section 10.0, Unlawful Discrimination and Penalties for Prohibited Practices, for more information.

For E-Verify employers:

- We recommend that you encourage your employees to record their legal name change with the Social Security Administration to avoid mismatches in E-Verify. For more information, visit www.e-verify.gov.
- If you complete a new Form I-9 based on a non-legal name change, you should confirm the new Form I-9 information through E-Verify. If you do not complete a new Form I-9, you should not create a new E-Verify case.
- Federal contractors who are subject to the Federal Acquisition Regulation (FAR) E-Verify clause and who choose to verify existing employees by updating an already-completed Form I-9 are subject to special rules regarding when they must complete a new Form I-9. If you choose to update Form I-9 for existing employees, you must complete a new Form I-9 when an employee changes their name. For more information, see the E-Verify Supplemental Guide for Federal Contractors, at e-verify.gov.

6.0 Evidence of Status for Certain Categories

6.1 Lawful Permanent Residents (LPR)

You must allow employees to choose which document(s) they will present from the Lists of Acceptable Documents. In Section 2, an LPR may choose to present a List A document (such as Form I-551, Permanent Resident Card, commonly referred to as a Green Card) or a List B and C document combination (such as a state-issued driver's license and unrestricted Social Security card).

Forms I-551 may have:

- No expiration date. We issued these cards from January 1977 to August 1989.
- A 10-year expiration date.
- A two-year expiration date.

Temporary Form I-551 Requires Reverification

If an LPR or conditional resident presents one of the temporary Forms I-551 listed below, you must reverify their employment authorization:

- List A receipt: The arrival portion of Form I-94, Arrival/Departure Record, containing an unexpired temporary I-551 stamp and a photograph of the employee. They must present their Form I-551 to you no later than when the stamp expires, or one year after U.S. Customs and Border Protection issues the Form I-94 if the stamp does not contain an expiration date.
- List A document: A foreign passport with either a temporary I-551 stamp or I-551 printed notation on a machine-readable immigrant visa (MRIV). They must present their Form I-551 to you when the stamp expires, or one year after the admission date if the stamp does not contain an expiration date.
    - Most MRIVs contain the following language on the visa: "UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR 1 YEAR." The one-year time period begins on the date of admission. If the employee receives an MRIV without the statement "FOR 1 YEAR," you should treat the MRIV as evidence of permanent residence status for one year from the date of admission.
    - If the stamp in the passport is endorsed "CR-1" and is near but not on the MRIV, it is still a valid endorsement.
    - Enter the number in red font under the MRIV "Expires On" date as the document number.
- List C document: An expired Form I-551 with a Form I-797, Notice of Action, that indicates USCIS has extended the card's validity. You must reverify the employee's employment authorization in Section 3 before their extension ends.

6.2 Native Americans

A Native American tribal document establishes both identity and employment authorization on Form I-9 under Lists B and C. To be acceptable for Form I-9 purposes, a tribe recognized by the U.S. federal government must issue the Native American tribal document. LPRs, aliens authorized to work, and noncitizen nationals may have a Native American tribal document. Because federal recognition of tribes can change over time, you should check the Bureau of Indian Affairs website at bia.gov to determine if the tribe is federally recognized.

The following documents are not considered Native American tribal documents for Form I-9 purposes and cannot be used for List B or C:

- A tribal membership document issued by a Canadian First Nation, such as a Canadian Indian tribe, rather than a U.S. Native American tribe, including one that grants membership and issues tribal membership documents to Canadian nationals; and
- A Certificate of Indian Status (commonly referred to as an "INAC card") issued by Aboriginal Affairs and Northern Development Canada (formerly known as Indian and Northern Affairs Canada, or "INAC").

While individuals who have these documents might possibly qualify for employment authorization under INA section 289 (and, if applicable, 8 CFR 289.2), their tribal membership cards issued by a Canadian First Nation, or INAC cards issued by the Government of Canada, cannot, by themselves, establish work authorization.

Native Americans Born in Canada

Native Americans born in Canada with at least 50% American Indian blood cannot be denied admission to the United States and are authorized to live and work here. When completing Form I-9, these individuals may present a combination of a List B and C document or Form I-551, Permanent Resident Card, if they chose to obtain one. You must accept these documents as long as they appear to be genuine and to relate to the person presenting them.

Note for E-Verify Employers: According to section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the E-Verify authorizing statute, all List B documents must contain a photograph. This includes Native American tribal documents presented as a List B document. If the employee's Native American tribal document does not contain a photograph, you should request the employee provide a List B document with a photograph. The Native American tribal document is acceptable as the employee's List C document. Your employee may also choose to provide a List A document in place of a List B and List C document.

6.3 Refugees and Asylees

Refugees and asylees are authorized to work indefinitely because their immigration status does not expire.

Refugees

Upon admission to the United States, DHS provides refugees with a Form I-94, Arrival/Departure Record, which does not expire.

When completing Form I-9, refugees should check "alien authorized to work" and enter "N/A" on the Expiration Date field in Section 1, even if they have an EAD with an expiration date.

The departure portion that contains an unexpired refugee admission stamp or an electronic Form I-94 with an admission class of "RE" is an acceptable receipt establishing both employment authorization and identity for 90 days. If the refugee presents this receipt, at the end of the 90-day receipt period, the refugee must present either an EAD or a document from List B, such as a state-issued driver's license, with a document from List C, such as an unrestricted Social Security card.

Refugees may also present an expired EAD with a Form I-797C, Notice of Action, if the notice lists the same employment authorization category as the expired EAD. This combination is considered an unexpired List A document and is valid for up to 180 days after the "Card Expires" date on the EAD. For more information, see Section 4.4, Automatic Extension of Employment Authorization Documents in Certain Circumstances.

Asylees

After being granted asylum in the United States, DHS issues a Form I-94, Arrival/Departure Record, to asylees. Form I-94 will contain a stamp or notation, such as "asylum granted indefinitely" or the appropriate provision of law (8 CFR 274a .12(a)(5) or INA 208) to show their employment authorization. An asylee can also present an electronic Form I-94 with an admission class of "AY." Form I-94 is an acceptable List C document and does not expire. Asylees who choose to present this document must also present a List B identity document, such as a state-issued driver's license or identification card.

When completing Form I-9, asylees should indicate "alien authorized to work" and enter "N/A" on the expiration date line in Section 1, even if they have an EAD with an expiration date.

USCIS issue EADs to asylees. These are acceptable List A documents; however, decisions from immigration judges or the Board of Immigration Appeals (BIA) granting asylum are not acceptable List C documents because they are not issued by DHS.

6.4 Exchange Visitors and Students

Each year, thousands of exchange visitors, international students, and their dependents come to the United States to study and work.

6.4.1 Exchange Visitors (J-1)

The Department of State (DOS) administers exchange visitor programs and designates the sponsors. Responsible officers within the program issue Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. Exchange visitors come to the United States for a specific period of time to participate in a particular program or activity, as described on their Form DS-2019. Only J-1 exchange visitors may use this form when employment is part of their program. Currently, DOS designates public and private entities to act as exchange sponsors for the following programs.

Exchange Visitor Programs

- Professors and research scholar
- Short-term scholars
- Trainees and interns
- College and university students
- Teachers
- Secondary school students
- Specialists
- Alien physicians
- International visitors
- Government visitors
- Camp counselors
- Au pairs
- Summer work travel

Memorandum of Understanding (MOU) Programs

- Summer work/travel: Australia and New Zealand
- WEST (Work/English Study/Travel): South Korea
- Intern work/travel: Republic of Ireland
- Intern/trainee (Innovative Programs): Portugal
- Intern program (Sciences, engineering, architecture, mathematics, and industrial occupations) Mexico

High school or secondary school students and international visitors are not authorized to work.

Responsible officers may authorize other J-1 students for part-time on-campus employment according to the terms of a scholarship, fellowship, assistantship, or off-campus employment based on serious, urgent, unforeseen economic circumstances. Responsible officers may also authorize J-1 students for a maximum of 18 months (or, for Ph.D. students, a maximum of 36 months) of practical training during or immediately after their studies. J-1 practical training includes paid off-campus employment and/or unpaid internships that are part of the student's program of study. Their responsible officer must authorize employment in writing for practical training. Special rules apply to student interns.

Employment for other J-1 exchange visitors is sometimes job- and site-specific or limited to a few months.

For more information about these categories and their employment authorization, contact the responsible officer whose name and telephone number are on the employee's Form DS-2019 or go to the DOS website at exchanges.state.gov.

USCIS does not issue EADs to J-1 exchange visitors.

However, DHS issues a Form I-94 indicating J-1 nonimmigrant status. DOS-designated program sponsors issue and endorse Form DS-2019, which indicates the type of work an exchange visitor is authorized to perform. For J-1 students, the program sponsor prepares additional informal documentation (a letter) that verifies employment authorization.

We consider the following to be a List A document:

- An unexpired foreign passport; and
- Form I-94 indicating J-1 nonimmigrant status and Form DS-2019 with the responsible officer's endorsement.

J-1 students may present the documents above if they also have a letter from the responsible officer authorizing employment.

To satisfy List B and C documents requirements, the J-1 student could present a state driver's license (List B) and a Form I-94 in combination with Form DS-2019 and a letter from a responsible officer (List C #7).

If the J-1 exchange visitor transfers to a different program or changes their sponsor, their Form DS-2019 must indicate the new program or sponsor.

Some exchange visitors may extend their status. If you have questions about any exchange visitor's continued employment authorization, contact the responsible officer whose name and telephone number are on the employee's Form DS-2019.

Dependents of a J-1 exchange visitor are classified as J-2 nonimmigrants and are only authorized to work if we have issued an EAD to them. A J-2 nonimmigrant's foreign passport and Form I-94 are not evidence of identity and employment authorization for Form I-9 purposes.

6.4.2 F-1 and M-1 Nonimmigrant Students

Foreign students pursuing academic studies and/or language training programs are classified as F-1 nonimmigrants, while foreign students pursuing nonacademic or vocational studies are classified as M-1 nonimmigrants. Designated school officials (DSO) at certified schools issue Form I-20, Certificate of Eligibility for Nonimmigrant (F-1)/(M-1) Students.

F-1 students may be eligible to work under certain conditions. There are several types of employment authorization for students, including:

- On-campus employment;
- Curricular practical training;
- Off-campus employment based on severe economic hardship;
- Employment sponsored by an international organization; and
- Optional practical training.

F-1 students may work on campus without approval from USCIS until they complete their course of study. The F-1 nonimmigrant admission notation on their Form I-94 usually states "D/S" indicating duration of status. The F-1 student's Form I-20 provides a Program End Date field, which is the latest date they can complete their studies. The student must enter the program end date in Section 1 as the date employment authorization expires.

To complete Section 2, the combination of the F-1 student's unexpired foreign passport and Form I-94 indicating F-1 nonimmigrant status is a List A document for on-campus employment. We do not require you to record information from the student's Form I-20 in Section 2.

F-1 students may work:

- On the school's premises, including on-location commercial firms that provide services for students on campus, such as the school bookstore or cafeteria; and
- At an off-campus location that is educationally affiliated with the school.

Employment that does not provide direct services to students is not on-campus employment. For example, an on-campus commercial firm, such as a construction company that builds a school building, does not provide direct student services. Guidelines for on-campus employment are available at ice.gov/sevis/employment.

On-campus employment is limited to 20 hours a week when school is in session. An exception to this limitation applies in cases of emergent circumstances that DHS announces in a Federal Register notice.

Curricular practical training (CPT) allows students to accept paid alternative work/study, internship, cooperative education, or any other type of required internship or practicum that sponsoring employers offer through cooperative agreements with the school. The CPT program must be an integral part of the student's degree program curriculum. The DSO must authorize CPT on the student's Form I-20. The student should enter the CPT employment end date from the employment authorization section of their Form I-20 in Section 1 as the date employment authorization expires.

In Section 2, you may enter:

- A List A document, including the combination of:
  - An unexpired foreign passport;
  - Form I-20 with the DSO endorsement for employment; and
  - Form I-94 indicating F-1 nonimmigrant status.

Or

- List B and List C documents:
  - For example, a state driver's license (List B document) and, under List C #7, a Form I-94 indicating F-1 nonimmigrant status with a properly endorsed Form I-20.

An acceptable Form I-20 for CPT must have all Employment Authorization fields completed. These fields include employment status, employment type, start and end date of employment, and the employer's name and location. Use the CPT Employment End Date on Form I-20 as the expiration date in Section 2.

For the other types of employment available to certain foreign students, (such as optional practical training (OPT) employment authorization, STEM (science, technology, engineering, and mathematics), OPT extension, or off-campus employment based on severe economic hardship) USCIS must grant an EAD to the student.

Border commuter students who enter the United States as an F-1 nonimmigrant may only work as part of their CPT or post-completion OPT.

M-1 foreign students in nonacademic or vocational studies may only accept employment if it is part of a practical training program and may only engage in such training after completion of their course of study. The student must receive an EAD before working and can only work for a maximum of six months of practical training. Enter the M-1 student's EAD information under List A in Section 2 of Form I-9.

Dependents of F-1 and M-1 students have F-2 or M-2 status and are not eligible for employment authorization.

Optional Practical Training (OPT) for F-1 Students – EAD Required

OPT provides practical training experience that directly relates to an F-1 student's major area of study on their Form I-20. An F-1 student authorized for OPT may work up to 20 hours per week while school is in session and full-time (20 or more hours per week) when school is not in session. After completing their course of study, USCIS may authorize an F-1 student up to 12 months of OPT upon completion of their degree program. Certain F-1 students may be eligible to extend their OPT; see F-1 STEM OPT Extension below for more information.

The designated school official must update Form I-20 to indicate OPT recommendation. The student must obtain an EAD from USCIS before they are authorized to work. The student may not begin employment until the date indicated on the EAD. The EAD establishes the student's identity and employment authorization for Form I-9 purposes.

When completing Section 1, the student must enter the EAD Card Expires date in the Authorized to Work Until field in Section 1. When completing Section 2 for this student, you should enter EAD's card number and Card Expires date under List A. When the student's EAD expires, you must reverify the student's employment authorization in Section 3.

F-1 STEM OPT Extension

An F-1 student who received a bachelor's, master's, or doctoral degree in science, technology, engineering, or mathematics from an accredited and Student and Exchange Visitor Program (SEVP)-certified school may apply for a 24-month extension of their OPT. Employment must be directly related to their major area of study, and you must be enrolled in and be in good standing with E-Verify.

Your E-Verify company identification number is required for the student to apply to USCIS for the STEM extension using Form I-765, Application for Employment Authorization. A STEM student may change employers or work at a different hiring site for the same employer, but any new employer or new hiring site must be enrolled in and be in good standing with E-Verify before the student begins employment. Moreover, new employers or hiring sites must timely report any change in the student's employment information, as described below.

The EAD issued to the F-1 STEM OPT student states "STU: STEM OPT ONLY." The following documents establish a student's identity and employment authorization for Form I-9:

- An unexpired EAD; or
- An expired EAD presented with Form I-20 endorsed by the student's designated school official recommending a STEM extension if the student timely filed their Form I-765 but their application is still pending. If the student has changed employers, this Form I-20 must also contain the new employer's information.
    - In this case, you should enter the following information under List A in Section 2:

1. Enter EAD in the Document Title field;
2. Enter EAD number in the Document Number field;
3. Enter the date 180 days from the Card Expires date on the EAD in the Expiration Date field; and
4. Enter "EAD EXT" in the Additional Information field.

To update Section 2 for a current employee with a STEM OPT extension:

1. Review the employee's Form I-20 endorsed by the student's designated school official recommending a STEM extension.
2. Enter EAD EXT and the date 180 days from the Card Expires date on the EAD in the Additional Information field. For example, EAD EXT mm/dd/yyyy.

You must reverify this student's employment authorization on the date you entered in Section 2.

The student's Form I-20 for STEM OPT must have all Employment Authorization fields completed. These fields include employment status, employment type, start and end date of employment, and your name and location.

You have specific responsibilities when providing practical training opportunities to STEM OPT students, including:

- Enrolling in E-Verify and remaining in good standing before employing an F-1 STEM OPT student.
- Implementing a formal training plan to augment the student's academic learning through practical experience.
- Completing the employer's portion and certifying Form I-983, Training Plan for STEM OPT Students.
- Reporting to the DSO and updating Form I-983 if there are any changes to or material deviations from the student's formal training plan.
- Reporting a student's termination of employment or departure to the DSO within five business days.

Additional requirements and information on your responsibilities are available at studyinthestates.dhs.gov.

Cap-Gap

The term "cap-gap" refers to the period between the time a nonimmigrant's F-1 student status would ordinarily end and their H-1B status begins. F-1 students who seek to change to H-1B status may be eligible for a cap-gap extension of status and employment authorization through Sept. 30 of the calendar year you filed Form I-129, Petition for Nonimmigrant Worker (H-1B petition) but only if the student's H-1B status begins on Oct. 1.

If you employ an F-1 nonimmigrant student in OPT and you timely filed an H-1B petition for that student, they may be able to continue working beyond the expiration date on their OPT EAD while waiting for the start date of an approved or pending H-1B petition.

There are two types of cap-gap extensions:

- **Extensions of F-1 status only (without OPT)**: If a student is in F-1 status when you file an H-1B petition with an Oct. 1 start date, but the student is not currently participating in OPT, they will receive a cap-gap extension of their F-1 status but will not be authorized to work until we approve the petition and their H-1B status begins on Oct. 1.
- **Extensions of F-1 status and OPT**: If a student is in F-1 status when you file an H-1B petition with an Oct. 1 start date and is currently participating in post-completion OPT, they will receive an automatic cap-gap extension of both their F-1 student status and their authorized period of post-completion OPT. If we select their petition and it remains pending or we approve it, the student will remain authorized to work as an F-1 student with OPT through Sept. 30.

Cap-Gap Automatic Extension Based on Timely Requests to Change Status

For an eligible F-1 student to receive an automatic EAD extension, you must:

- Timely file a petition to change the student's status to H-1B; and
- State the student's employment start date is Oct. 1 of the year filed the H-1B petition.

The employee's expired EAD in combination with your Form I-797C, Notice of Action, showing the above requirements is an unexpired EAD under List A. This automatic extension ends if the H-1B petition is rejected, denied, revoked, or withdrawn.

Timely filed means you submitted the H-1B petition (indicating change of status rather than consular processing) during the acceptance period while the student's authorized F-1 duration of status admission was still in effect. This includes any period of time during the academic course of study, any authorized periods of post-completion OPT, and the 60-day departure preparation period.

How to Complete Form I-9

In Section 1, a new employee should:

- Select “An alien authorized to work until;” and
- Enter Sept. 30 and the year the H-1B change of status petition was filed as the expiration date.

In Section 2, you should:

- Enter EAD as the document title;
- Enter the Form I-797C receipt number in the Document Number field;
- Enter Sept. 30 and the year you filed the petition in the Expiration Date field; and
- Enter CAP-GAP in the Additional Information field.

To update Section 2 for a current employee eligible for a cap-gap extension once you receive Form I-797C, enter CAP-GAP and Sept. 30 and the year you filed the petition in the Additional Information field. For example, CAP-GAP 09/30/yyyy.

Cap-Gap Reverification

If an employee’s EAD automatic extension expires on Oct. 1, you must reverify their employment authorization in Section 3 by Sept. 30 of the year you filed the petition. When we approve the H-1B petition you will receive a Form I-797 with your employee’s new Form I-94. Enter the Form I-94 document title, number, and expiration date in Section 3 to complete reverification. The employee may also present any document from List A or C, or an acceptable List A or C receipt described in Section 4.3, Acceptable Receipts, to reverify their employment authorization.

For E-Verify Employers

You may create a case in E-Verify for a new employee with a cap-gap extension using the information provided on their Form I-9.

6.5 H-1B Specialty Occupations

U.S. businesses use the H-1B program to temporarily employ foreign workers in a specialty occupation that requires theoretical or technical expertise in a certain field, such as science, engineering, or computer programming. As a U.S. employer, you may submit a Form I-129, Petition for a Nonimmigrant Worker, to USCIS for nonimmigrants who have certain skills, provided they meet established requirements. You must also include an approved Form ETA 9035, Labor Condition Application, with Form I-129 and other documentation.

- **A Newly Hired Employee with H-1B Classification**. If USCIS approves your petition, you will receive Form I-797, Notice of Approval, which indicates that the foreign worker has been approved for H-1B classification. Once your employee begins working for you, you must both complete Form I-9.
- **H-1B Extensions**. USCIS can approve H-1B petitions for an initial period of up to three years and can grant extensions for up to an additional three years. Under certain circumstances, USCIS may extend an H-1B worker’s employment authorization beyond the six-year limit.
- **H-1B Continuing Employment with the Same Employer**. For an H-1B worker to continue working for you beyond the expiration of their current H-1B status (as indicated by the expiration date on their Form I-797), you must request an extension of stay before their H-1B petition expires. If you timely file a Form I-129 to extend their status, they are authorized to continue working for up to 240 days while USCIS processes the petition, or until USCIS makes a decision on your petition, whichever comes first. When your employee’s work authorization expires, you should write “240-Day Ext.” and enter the date you submitted Form I-129 to USCIS in the Additional Information field in Section 2. You must reverify the employee’s employment authorization in Section 3 once you receive USCIS’s decision, or by the end of the 240-day period, whichever comes first. See Section 6.7, Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay.
- **H-1B Employees Changing Employers (Porting)**. An H-1B employee who is changing H-1B employers may begin working for the new employer as soon as the employer files a Form I-129 petition on behalf of the employee, however, the employer must do this before the employee’s period of authorized stay expires. You must also complete a new Form I-9 for this newly hired employee. An H-1B employee’s unexpired Form I-94 issued for employment with the previous employer, along with their foreign passport, qualifies as a List A document. You should write “AC-21” and enter the date you submitted Form I-129 to USCIS in the Additional Information field in Section 2. See Section 6.7, Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay.

For more information about employing H-1B workers, please visit our H-1B webpage. You may also read the Form I-129 Instructions for more information on filing extensions of stay.

6.6 H-2A Temporary Agricultural Worker Program

The H-2A program allows U.S. employers to bring foreign workers to the United States to fill temporary or seasonal agricultural jobs (usually lasting no longer than one year) if U.S. workers are not available. Before filing a petition with USCIS, you must first obtain a valid temporary labor certification for H-2A workers from the U.S. Department of Labor (DOL). Once certified, you can request H-2A classification for multiple workers by filing a Form I-129, Petition for a Nonimmigrant Worker with USCIS. If we approve your petition, you can hire the foreign workers you petitioned for.

- **Newly Hired Employee in H-2A Classification**. An H-2A worker’s unexpired Form I-94 indicating H-2A status, along with his or her foreign passport qualifies as a List A document. Enter information from these documents in Section 2 under List A, along with the expiration date found on Form I-94.
- **H-2A Continuing Employment with the Same Employer**. You may extend your worker’s H-2A status in increments of no longer than one year by timely filing a new Form I-129 petition on behalf of the worker. In most cases, a new temporary labor certification from DOL is required before you can file Form I-129. To avoid disruption of employment, you should file a petition to extend the employee’s status and employment authorization well before it expires. When your H-2A employee’s work authorization expires, you must update their Form I-9 by writing “240-Day Ext.” and entering the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2. USCIS may extend a single H-2A petition for up to two weeks without an additional approved labor certification under certain circumstances. In this case, write “two-week extension” and enter the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2.

If you timely file a Form I-129 to extend your H-2A employee’s status, they are authorized to continue working for up to 240 days while USCIS processes the petition, or until USCIS makes a decision on your petition, whichever comes first. You must reverify the employee’s employment authorization in Section 3 once you receive USCIS’s decision, on the H-2A petition or by the end of the 240-day period, whichever comes first.

See Section 6.7, Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay.

- **H-2A Extension with a New Employer.** In most cases, an H-2A worker may not begin working for a new employer until USCIS approves the petition requesting a change of employer. However, if you have enrolled in E-Verify, you may employ an H-2A worker beginning on the “Received Date” on the Form I-797 USCIS sends you. The H-2A worker is authorized to work for up to 120 days while USCIS processes the petition, or until USCIS makes a decision on your petition, whichever comes first. You and your newly hired employee must complete Form I-9. The employee’s unexpired Form I-94 indicating his or her H-2A status, along

with the employee's foreign passport, qualifies as a List A document. You should write "120-Day Ext." and enter the "Received Date" from Form I-797in the Additional Information box in Section 2.

If USCIS denies the new petition before the 120-day period expires, USCIS will automatically terminate the H-2A worker's employment authorization within 15 calendar days of its denial decision. USCIS may also terminate employment authorization if you fail to remain an E-Verify employer in good standing. You must reverify the employee's employment authorization in Section 3 either by the end of the 120-day period or once you receive our decision on the H-2A petition, whichever comes first. If USCIS denies your petition, count 15 days from the date of the denial to determine the date the employee's employment authorization expires.

See Section 6.7, Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay.

For more information about employing H-2A workers, please visit our H2A webpage.

6.7 Extensions of Stay for Other Nonimmigrant Categories

Nonimmigrants in other categories may receive extensions of stay if their employers timely file Form I-129 (or Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker for CW-nonimmigrants) with us. These employees are authorized to continue working for up to 240 days while USCIS processes their petition, or until USCIS makes a decision on your petition, whichever comes first. You should write "240-day Ext." and the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2.

Other categories include: CW-1 H-1B, H-1B1, H-2A, H-2B, H-3, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R-1, TN, A3, E-1, E-2, E-3, G-5, and I. (Individuals in the E-1 and E-2 categories are employers).

You may read the Form I-129 Instructions for more information on filing extensions of stay.

Form I-9 Requirements When Requesting Extensions of Stay

Keep the following documents with the employee's existing Form I-9 to show that you filed for an extension of stay on their behalf:

- A copy of the new Form I-129 or Form I-129CW;
- Proof you paid the filing fee; and
- Proof you mailed the new petition to USCIS.

After submitting the petition to USCIS, USCIS will send you Form I-797C acknowledging that your petition is pending. Once you receive the Form I-797C, you should keep it with the employee's Form I-9 and you no longer need to keep a copy of the Form I-129 application, proof of payment, and mailing receipt with the Form I-9.

If USCIS approves the petition for an extension of stay, you will receive Form I-797A that includes an expiration date and an attached Form I-94. Enter the document title, number, and expiration date in Section 3 of Form I-9. You must give your employee the Form I-94, which is evidence of their employment-authorized nonimmigrant status.

7.0 Rules for Continuing Employment and Other Special Rules

You must complete a new Form I-9 when a hire takes place, unless you are rehiring an employee within three years of the date of the employee's previous Form I-9. However, in certain situations, a hire is not considered to have taken place despite an interruption in employment. In case of an interruption in employment, you should determine whether the employee is continuing in his or her employment and has a reasonable expectation of employment at all times.

These situations constitute continuing employment:

- Approved paid or unpaid leave on account of the employee's illness or pregnancy; maternity or paternity leave; vacation; study, union business; a family member's illness or disability or other temporary leave that you have approved.
- Promotions, demotions, or pay raises.
- Temporary layoff for lack of work.
- Strikes or labor disputes.
- Reinstatement after disciplinary suspension for wrongful termination found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement.
- Transfer from one distinct unit of an employer to another distinct unit of the same employer; you may transfer the employee's Form I-9 to the receiving unit.
- Seasonal employment.
- Continuing employment with a related, successor, or reorganized employer, as long as the employer obtains and maintains records and Forms I-9, where applicable, from the previous employer. A related, successor, or reorganized employer includes:
    - The same employer at another location;
    - An employer who continues to employ any employee of another employer's workforce, where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For these purposes, any agent designated to complete and maintain Form I-9 must enter the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association.
    - Employers who have acquired or merged with another company have two options:
        - **Option A**: Treat all acquired employees as new hires and complete a new Form I-9 for every individual. Enter the effective date of acquisition or merger as the employee's first day of employment in Section 2 of the new Form I-9. If you choose Option A, avoid engaging in discrimination by completing a new Form I-9 for all of your acquired employees, without regard to actual or perceived citizenship status or national origin.
        - **Option B**: Treat all acquired individuals as employees who are continuing in their uninterrupted employment status and retain the previous owner's Form I-9 for each acquired employee. You will be liable for any errors or omissions on the previously completed Form I-9. You and/or the employee should make any corrections to the acquired employee's existing Form I-9. For more information, see Section 8: Correcting Form I-9.

Employees hired on or before Nov. 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times are exempt from completing Form I-9 and cannot be verified in E-Verify. For help with making this determination, see 8 CFR 274a.2(b)(1)(viii) and 8 CFR 274a.7. If you determine that an employee hired on or before Nov. 6, 1986, is not continuing in their employment or does not have a reasonable expectation of employment at all times, the employee may be required to complete a Form I-9.

Federal contractors with the FAR E-Verify clause are subject to special rules regarding the verification of existing employees. For more information, see the E-Verify Supplemental Guide for Federal Contractors at e-verify.gov.

To determine whether an employee continuing their employment had a reasonable expectation of employment at all times, you should consider several factors, including (but not limited to) whether:

- The individual was employed on a regular and substantial basis. You can determine “regular and substantial basis” by comparing other workers who are similarly employed by the employer.
- The individual complied with the employer’s established and published policy regarding his or her absence.
- The employer’s past history of recalling absent employees for employment indicates the likelihood that the individual in question will resume employment with the employer within a reasonable time.
- Another worker has not permanently taken the individual’s former position.
- The individual has not sought or obtained benefits during their absence from employment that are inconsistent with an expectation of resuming employment within a reasonable time.
- Your financial condition allows the individual to resume employment within a reasonable time.
- The oral and/or written communication between you, your supervisory employees, and the individual indicates the individual will likely resume employment within a reasonable time.

Inspect the previously completed Form I-9 (and, if necessary, update the form or reverify the employee) and store the form as if there was no interruption in employment.

If you determine that your employee was terminated and is now rehired, and the rehire occurs within three years from the date the original Form I-9 was completed, you have an option to complete a new form or rely on the original one.

7.1 Other Special Rules for Certain Employers

Members of Employer Associations

Special rules apply to employers who are members of an association of two or more employers that have entered into a collective bargaining agreement with one or more employee organizations. In this case, you will comply with the employment eligibility verification requirements for your employee if:

- The employee is a member of a collective bargaining unit and is employed under a collective bargaining agreement as described above; and
- Another employer that is a member of the same employer association (or an agent of the employer association) has previously complied with the employment eligibility verification requirements for this individual within three years (or, if less, the period of time the individual is authorized to be employed in the United States).

Penalties for employing aliens knowing they are unauthorized to work in the United States still apply.

State Employment Agencies

A state employment agency, also known as state workforce agency, is defined in 8 CFR 274a.1 as any state government unit designated to cooperate with the U.S. Employment Service in the operation of the public employment service system.

State employment agencies have the option to complete Form I-9 for individuals they refer for employment. Agencies that do so must issue an employment eligibility certificate to the employer so it is received within 21 business days of the date the referred individual is hired. The referred individual cannot present the certificate.

Form I-9

To complete Form I-9, the agency should follow the guidance in this handbook, except that the agency should leave the employee’s first day of employment blank in Section 2 and must not accept receipts in place of documents.

They are not required to complete Form I-9 and issue a certificate to you for a referred individual who is hired for three days or less. If they choose to complete Form I-9 for these individuals, they must be consistent and complete Form I-9 for all individuals hired for three days or less. They should notify you of their policy under these circumstances. If the agency chooses not to verify employment eligibility or issue certifications, they should tell you that you must complete Form I-9 for these individuals. This notification may be included in the job order or referral form you receive from the agency.

Referral

After the agency and the referred individual complete Form I-9, the agency should provide you with a job order or other appropriate referral on behalf of the referred individual. The job order serves as evidence that the agency completed Form I-9 for the referred individual. The agency may provide you the job order telephonically.

Job order or other referrals, including telephonic authorizations provide the:

- Name of referred individual;
- Referral date;
- Job order number or other identifying number;
- Agency official’s name and title; and
- Agency’s address and telephone number

Certification Standards

Agencies must issue a certificate on official agency letterhead and a designated official must sign it. Certificates must include the following information:

- Date of issuance;
- Employer’s name and address;
- Referred individual’s name and date of birth;
- Position or type of employment for referred individual;
- Job order number;
- Form I-9 Section 2 document(s), including title and number;
- Certification that the agency complied with 8 CFR 274(a)(1)(B) for verifying the referred individual’s identity and employment eligibility, and determining to the best of the agency’s knowledge that the individual is authorized to work in the United States;
- Any restrictions, conditions, expiration dates, or other limitations that relate to the individual’s employment authorization or a statement affirming that there are no restrictions;
- A statement that the employer is not required to verify the individual’s identity or employment eligibility, but that you must retain the certification in place of Form I-9;
- A space or line for the referred individual, under penalty of perjury, to sign his or her name in front of the employer when the employer receives the certification; and

- A statement that counterfeiting, falsification, unauthorized issuance or alteration of the certification constitutes a violation of federal law under Title 18, U.S.C. 1546.

If a previously referred and certified individual returns within three years of completing Form I-9, the agency should review the employee's Form I-9. If the individual is still employment authorized, the agency does not need to complete a new Form I-9 before issuing a new certificate. A new certificate is not required when an individual is referred and rehired by the same employer. The agency must reverify the individual's employment authorization in Section 3 if it is expired before issuing a new certificate. See Section 5.1, Reverifying Employment Authorization for Current Employees, for more information.

If the referred individual returns for other referrals and the agency completed their Form I-9 more than three years ago, the agency must complete a new Form I-9.

Document Retention

The agency must have a Form I-9 and certificate copy for each referral on an employer's payroll.

The state employment agency must retain Form I-9 and the certificate for three years from the date that the individual was last referred by the agency and hired by the employer. A copy of the certificate must be retained by the employer for three years after the referred individual is hired or one year after the individual stops working for the employer, whichever is later.

Employers of Individual Referred by a State Employment Agency

If an agency refers a potential employee to you with a job order, other appropriate referral form or telephonically authorized referral, and the agency sends you a certificate within 21 business days of the referral, you do not have to check documents or complete a Form I-9 if you hire that person.

Certification

After hiring a referred individual and upon receiving the certificate issued by the state employment agency, you must:

- Review the identifying information to ensure it relates to the person hired;
- Observe the individual sign the certificate at the time you receive it;
- Comply with reverification requirements by:
    - Updating the certificate upon expiration of the employment authorization date if required; or
    - No longer employing the individual upon expiration of their employment authorization date on the certificate.

See Section 5.1, Reverifying Employment Authorization for Current Employees, for reverification information. As a reminder, reverification will take place on your employee's certificate and not Section 3 of Form I-9.

Your state's agency is not required to complete Form I-9 or issue certificates for your employees who are hired for three days or less. If this is your state agency's policy, you are required to complete Form I-9 for these employees.

Rehire/Reverification

You do not need to reverify an employee if you:

- Rehire the employee within three years of the issue date of their initial certificate; and
- Determine that the certificate pertains to the employee and they remain employment authorized.

If you review the certificate and determine the employee does not appear to be employment authorized, reverify the employee by updating the certificate. This means the employee must present additional documents to show they are employment authorized. See Section 12.1, List A Documents That Establish Identity and Employment Authorization, or Section 12.3, List C Documents that Establish Employment Authorization, for acceptable documents for reverification.

Do not reverify the following documents after they expire:

- U.S. passports;
- U.S. passport cards;
- Form I-551, Alien Registration/Permanent Resident Cards; and
- List B documents.

If you do not reverify an employee's employment authorization and continue to employ the individual after their employment authorization has expired, you will violate INA 274A(a)(2) and could be subject to penalties as provided in Section 10.0, Unlawful Discrimination and Penalties for Prohibited Practices.

Document Retention

You should document any telephonic authorized job referral as evidence of the job order. Retain job referrals where you retain your Forms I-9.

You must have a certificate for each referred individual who is on your payroll and retain it for a certain amount of time after they stop working for you. Retention of certificates for a rehired referred individual are calculated from the last date of hire. To calculate how long to keep a certificate:

- If they worked for less than two years, retain the certificate for three years after the date you hired them.
- If they worked for more than two years, retain their certificate for one year after the date they stop working for you.

8.0 Correcting Errors or Missing Information on Form I-9

If you (the employer, recruiter, or referrer for a fee) discover an error or missing information in Section 1 of an employee's Form I-9, you should ask the employee to correct the error or add the missing information. Only employees may correct errors or omissions made in Section 1.

Have the employee:

- Draw a line through the incorrect information;
- Enter the correct or missing information; and
- Initial and date the correction.

You should attach a written explanation of why information was missing or needed correcting. If the employee's employment has ended, attach to the existing form a signed and dated statement identifying the error or omission and explain why corrections could not be made, for example, the employee no longer works for you.

If the employee is remotely located, you should develop the appropriate business process to allow them to correct or enter missing information.

Corrections by a Preparer/Translator Who Helped with Section 1

Upon discovering an error or missing information, the preparer and/or translator should:

- Draw a line through the incorrect information;
- Enter the correct or missing information; and
- Initial and date the correction;

Or

- Draw a line through the incorrect information;
- Have the employee provide the correct or missing information; and
- Have the employee initial and date the correction.

If the preparer and/or translator is the same person who completed the Preparer and/or Translator Certification block when the employee initially completed Form I-9, they should not complete the certification block again. If the preparer and/or translator did not previously complete the certification block, they should:

- Complete the certification block; or
- If the certification block was previously completed by a different preparer and/or translator:
  - Draw a line through the previous preparer and/or translator information; and
  - Enter the new preparer and/or translator information (and indicate “for corrections”).

Correcting Section 2 and Section 3

You may only make corrections in Section 2 or 3. If you discover an error or missing information, you should:

- Draw a line through incorrect information;
- Enter the correct or missing information; and
- Initial and date the correction or missing information.

You should attach a written explanation of why information was missing or needed correcting. If you failed to enter the date you completed Section 2 and/or 3, you should not back date the form. Instead, enter the current date and initial by the date field.

To correct multiple errors in one section, you may redo the section on a new Form I-9 and attach it to the old form. You can also complete a new Form I-9 if it contains major errors (such as entire sections that were left blank or you completed Section 2 based on unacceptable documents). You should attach a written explanation to the employee’s Form I-9 describing why you made changes to an existing Form I-9 or why you created a new Form I-9.

If you make any changes on the form, do NOT conceal them by, for example, erasing text or using correction fluid. Doing so may lead to increased liability under federal immigration law. If you made these types of changes, we recommend you attach to the Form I-9 a signed and dated written explanation for the changes.

If you use an electronic Form I-9, your audit trail should reflect all corrections and additions made to Sections 1, 2, or 3.

9.0 Retaining Form I-9

How Long Must I Keep a Form I-9?

You must keep a completed Form I-9 on file for each employee on your payroll (or otherwise receiving remuneration) who was hired after Nov. 6, 1986 (or on or before Nov. 27, 2009, if employed in the CNMI). Never dispose of a current employee’s Form I-9; you must keep it for as long as the employee works for you, and for a certain amount of time after they stop working for you. This requirement applies even if the employee ends employment shortly after you hired them.

Never mail Form I-9 to USCIS or U.S. Immigration and Customs Enforcement.

Only when an employee stops working for you should you calculate how much longer you must keep their Form I-9. Federal regulations state you must retain a Form I-9 for each person you hire for three years after the date of hire, or one year after the date employment ends, whichever is later.
To calculate how long to keep a former employee’s Form I-9:

- If they worked for less than two years, retain their form for three years after the date you entered in the First Day of Employment field.
- If they worked for more than two years, retain their form for one year after the date they stop working for you.

You can retain Form I-9 on paper, microfilm or microfiche, or electronically. You only need to retain pages that you and your employee wrote information on: for example, you don’t need to keep the Lists of Acceptable Documents page or the instructions.

Insufficient or incomplete documentation is a violation of section 274A (a)(1)(B) of the INA (8 CFR Part 274a .2(f)(2)).

Retaining Paper Form I-9

You may retain completed paper forms with original handwritten signatures on-site or at an off-site storage facility for the required retention period, as long as you are able to present Forms I-9 within three business days of an inspection request from DHS, the Department of Justice’s Civil Rights Division, Immigrant and Employee Rights Section (IER), or U.S. Department of Labor (DOL) officers.

Retaining Form I-9 on Microfilm and Microfiche

You may retain copies of completed paper forms with original handwritten signatures on microfilm or microfiche. When using microfilm or microfiche, you should:

- Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be more than 20 years, depending on the employee and your business;
- Use well-maintained equipment to create and view clear, readable Forms I-9 and reproduce legible paper copies for officials who inspect your forms;
- Place indexes either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last jacket of a series.

9.1 Form I-9 and Storage Systems

Create Your Own Form I-9

USCIS offers a Form I-9 that can be completed on a computer but does not have full electronic capabilities. You may create your own electronic Form I-9 as long as you:

- Provide employees instructions for completing the form;
- Create a legible form;
- Do not make changes to the name, content, or sequence of the data elements and instructions we provide on our website;
- Do not insert additional data elements or language; and
- Retain generated forms according to the standards specified in 8 CFR 274a.2(e), (f), (g), (h) and (i), as applicable.

You may also use any commercial computer program or automated data processing system that complies with these standards. Ensure that the program or system does not restrict access or use by a U.S. government agency.

Using an Electronic Storage System for Form I-9

You may retain Form I-9 using either a paper or electronic system, or a combination of both. If you complete a paper Form I-9, you may scan and upload the original signed form, correction or update, and retain it electronically. You may destroy the original paper form after you have securely stored it in an electronic format. Any electronic system you use to generate Form I-9 or retain completed Forms I-9 must include:

- Reasonable controls to ensure the system's integrity, accuracy, and reliability;
- Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature, if used;
- An inspection and quality assurance program that regularly evaluates the system and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used;
- An indexing system that allows users to identify and retrieve records maintained in the system; and
- The ability to reproduce legible and readable paper copies.

If you choose to complete or retain Form I-9 electronically, you may use one or more electronic generation or storage systems, as long as any Form I-9 retained in the system remains fully accessible and meets the regulations. You may change systems as long as the new system continues to meet regulatory performance requirements. For each electronic system used, you must maintain and make available upon request complete descriptions of:

- The system, including all procedures relating to its use; and
- The indexing system that identifies and retrieves relevant documents and records. You do not need to maintain separate indexing databases for each system if you can achieve comparable results without doing so.

Documenting Your Form I-9 Business Processes

If you choose to complete or retain Form I-9 electronically, you must maintain (and make available upon request) documentation of the business processes that:

- Create, or generate, the retained Form I-9;
- Modify and maintain the retained Form I-9; and
- Establish the authenticity and integrity of the forms, such as audit trails.

Electronically Signing Form I-9

If you complete Form I-9 electronically using an electronic signature, your system for capturing electronic signatures must:

- Allow individuals to acknowledge that they read the attestation;
- Attach the electronic signature to an electronically completed Form I-9;
- Affix the electronic signature at the time of the transaction;
- Create and preserve a record verifying the identity of the person producing the signature;
- Upon the employee's request, provide a printed confirmation of the transaction; and
- Include a method to acknowledge you have attested to the required information in Section 2.

If you choose to use an electronic signature to complete Form I-9 but do not comply with these standards, DHS will determine that you have not properly completed Form I-9 and are in violation of section 274A(a)(1)(B) of the INA (8 CFR Part 274a.2(b)(2)).

Retaining Electronic Form I-9 Securely

If you retain Form I-9 electronically, you must implement an effective records security program that ensures:

- Only authorized personnel have access to electronic records;
- You have a backup plan to recover records to protect against information loss;
- Authorized personnel are trained to minimize the risk of wrongfully or accidentally altering or erasing electronic records; and
- The system creates a secure and permanent record when an individual creates, completes, updates, modifies, alters, or corrects an electronic file. This record should include the date of access, the identity of the individual who accessed the electronic record, and the particular action they took.

If your action or inaction results in an electronic record being altered, lost, or erased, and you knew, or reasonably should have known, that the action or inaction could have that effect, then you are in violation of section 274A(b)(3) of the INA (8 CFR 274a.2(g)(2)).

9.2 Retaining Copies of Form I-9 Documents

If you choose to copy or scan documents an employee presents when completing Form I-9, you must retain the copies with their Form I-9 or their employee record. If you are enrolled in E-Verify, you must copy the following List A documents used as part of photo matching:

- U.S. passport;
- U.S. passport card;

- Form I-551, Permanent Resident Card; and
- Form I-766, Employment Authorization Document (EAD).

Making photocopies of an employee's documents does not take the place of completing Form I-9. Even if you retain copies of documents, you are still required to fully complete and retain Form I-9. If you do not participate in E-Verify, you are not required to make photocopies of documents. If you choose to retain copies of an employee's documents for reasons unrelated to E-Verify requirements, you must do so for all employees, regardless of actual or perceived national origin or citizenship status, or you may violate anti-discrimination laws.

Copies or electronic images of documents must be retrievable consistent with DHS's standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 CFR 274a.2(b)(3).

If you make copies or electronic images of the employee's documents, you must retain them with the corresponding Form I-9 or with the employee's records according to the electronic records retention standards specified in 8 CFR 274a.2(b)(3). However, if you make copies or electronic images of the employee's documents, you must make them available at the time of a Form I-9 inspection by DHS or another federal government agency.

9.3 Inspection

The INA specifically authorizes DHS, IER, and DOL officers to inspect Forms I-9, including any copies of employees' documents retained with the corresponding Form I-9. Officers will give you a minimum of three business days' notice before starting an inspection. You must make Forms I-9 available upon request at the location where DHS, IER, or DOL officers request to see them. You may also send Forms I-9 and supporting documents to the agency in electronic format or hard copy, if requested.

If you store Form I-9 records at an off-site location, tell the inspecting officer where the location is and make arrangements for the inspection. The inspecting officers may perform an inspection at an office of an authorized agency of the United States if previous arrangements are made. Recruiters or referrers for a fee who designate an employer to complete employment verification procedures may present copies or printed electronic images of Forms I-9 at an inspection. If you refuse or delay an inspection, you will violate DHS retention requirements.

During an inspection, you must:

- Retrieve and present only the Forms I-9 and supporting documents the inspecting officer specifically requests. Supporting documents include copies of Form I-9 documents stored with Forms I-9 and associated audit trails that show the actions performed within or on the system during a given period of time.
- Provide the inspecting officer the appropriate hardware, software, personnel, and documents necessary to locate, retrieve, read, and reproduce any electronically stored Form I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.
- If requested, give the inspecting officer any reasonably available or obtainable electronic summary files (such as spreadsheets) containing all of the information fields on any electronically stored Form I-9.

If you are an E-Verify employer and you receive a request for inspection, you should provide Forms I-9 that contain E-Verify case verification numbers. If you did not include the E-Verify case numbers on Form I-9, provide the E-Verify Case Detail Pages during the inspection.

10.0 Unlawful Discrimination and Penalties for Prohibited Practices

10.1 Unlawful Discrimination

Discriminating in the Form I-9 and E-Verify verification processes can violate federal law. This section describes prohibited discrimination and how to prevent it while verifying an individual's employment eligibility.

10.1.1 Overview of Federal Employment Discrimination Laws

The anti-discrimination provision of the Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:

1. Unfair documentary practices;
2. Citizenship or immigration status discrimination in hiring, firing and recruiting;
3. National origin discrimination in hiring, firing and recruiting; and
4. Retaliation or intimidation.

The Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER), enforces this law.

Title VII of the Civil Rights Act of 1964 (Title VII) and other federal laws prohibit employment discrimination based on race, color, national origin, religion, sex, age, disability, and genetic information. The U.S. Equal Employment Opportunity Commission (EEOC) enforces these laws.

10.2 Types of Employment Discrimination Prohibited Under the INA

Unfair Documentary Practices

The INA prohibits you from committing unfair documentary practices, which means discriminating against an employee when you verify their identity and employment authorization (generally, the Form I-9 and E-Verify processes). Unfair documentary practices generally occur when employers treat individuals differently on the basis of national origin or citizenship or immigration status in the Form I-9 or E-Verify process, or any other process an employer may use to verify employment eligibility. This can be broadly categorized into three types of conduct:

1. Requesting that an individual produce more or different documents than are required by Form I-9 to establish their identity and employment authorization;
2. Requesting that individuals present a particular document, such as a Form I-551, Permanent Resident Card, to establish identity and/or employment authorization; and
3. Rejecting documents that reasonably appear to be genuine and to relate to the individuals presenting them.

These practices may constitute unfair documentary practices if they are committed based on citizenship or immigration status, or national origin, and should be avoided when verifying employment eligibility.

Citizenship Status Discrimination

Citizenship or immigration status discrimination occurs when an employer treats individuals differently based on their real or perceived citizenship or immigration status with respect to hiring, firing, or recruitment, or referral for a fee if the employer has four or more employees. U.S. citizens, U.S. nationals, asylees, refugees, and recent permanent residents are protected from this type of discrimination.

Note: Certain employers are required by a law, executive order, regulation, or government contract to only hire U.S. citizens to fill specific positions.

National Origin Discrimination

National origin discrimination generally occurs when an employer treats individuals differently based on their national origin with respect to hiring, firing, recruitment, or referral for a fee. An individual's national origin can relate to many things, such as their place of birth, country of origin, ethnicity, ancestry, native language, accent, or the perception that they look or sound "foreign." The INA's national origin discrimination prohibition generally covers employers with 4 to 14 employees and protects all employment-authorized individuals. The EEOC generally has jurisdiction over national origin claims involving employers with 15 or more employees, regardless of the work authorization status of the discrimination victims.

Retaliation

An employer or other covered entity cannot intimidate, threaten, coerce, or otherwise retaliate against individuals because they:

- Filed an immigration-related employment discrimination charge or complaint;
- Testified or participated in any IER investigation, proceeding, or hearing; or
- Otherwise asserted their or another person's rights under the INA's anti-discrimination provisions.

10.3 Types of Discrimination Prohibited by Title VII and Other Federal Anti-Discrimination Laws

Title VII and other federal laws also prohibit employment discrimination based on national origin, race, color, religion, sex, age, disability, and genetic information. These laws also protect workers from retaliation. The EEOC has jurisdiction over employers who employ 15 or more employees for 20 or more weeks in the preceding or current calendar year and prohibits discrimination in any aspect of employment, including:

- Hiring and firing;
- Compensation, assignment, or classification of employees;
- Transfer, promotion, layoff, or recall;
- Job advertisements;
- Recruitment;
- Testing;
- Using company facilities;
- Training and apprenticeship programs;
- Fringe benefits;
- Pay, retirement plans, and leave; or
- Other terms and conditions of employment.

10.4 Avoiding Discrimination in Recruiting, Hiring, and the Form I-9 Process

You should treat individuals equally when recruiting and hiring, and when verifying employment authorization and identity.

You should not:

- Have different rules or requirements for individuals because of their national origin, citizenship, or immigration status. You must allow each individual to choose which documents to present from the Lists of Acceptable Documents. For example, you cannot request that non-U.S. citizens present DHS-issued documents. Both U.S. citizens and non-U.S. citizens may present a driver's license (List B) and an unrestricted Social Security card (List C) to establish identity and employment authorization if they wish. However, you must reject documents that do not reasonably appear to be genuine or to relate to the individual presenting them, regardless of their citizenship status or national origin.
- Request to see employment eligibility verification documents before hiring an employee and having them complete Form I-9 because they look or sound "foreign," or because they state they're not a U.S. citizen.
- Refuse to accept a document or refuse to hire an individual because their document has a future expiration date.
- Request specific documents from individuals to create an E-Verify case or based on an E-Verify Tentative Nonconfirmation.
- Request that an individual create a Self Check case and/or present documents showing they confirmed employment eligibility with Self Check.
- Request that an employee who presented an unexpired Permanent Resident Card present a new document when the Permanent Resident Card expires.
- Request specific documents for reverification. For example, you should allow an employee who presented an unexpired Form I-766, Employment Authorization Document, during initial verification to present any document from either List A or C during reverification.
- Limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law; regulation; executive order; or federal, state, or local government contract.

If you do any of the actions above based on a worker's citizenship, immigration status, or national origin, then your actions may violate federal discrimination laws.

10.5 Procedures for Filing Charges of Employment Discrimination

Immigrant and Employee Rights Section (IER)

An individual, a person acting on behalf of an individual, or a DHS officer who has reason to believe that discrimination has occurred may file discrimination charges with IER within 180 days of the alleged discriminatory act.

IER will send you a letter within 10 days notifying you that someone has filed a charge against you and start its investigation. If you refuse to cooperate with the investigation, IER can obtain a subpoena to compel you to produce the requested information and documents or to appear for an investigative interview or deposition.

U.S. Equal Employment Opportunity Commission (EEOC)

The charging party must file a charge must with the EEOC within 180 days from the date of the alleged violation to protect the charging party's rights. This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

10.6 Penalties for Unlawful Discrimination

If an investigation reveals that you engaged in unfair immigration-related employment practices under the INA, IER may file a lawsuit. The charging party may also file a lawsuit. Settlements or lawsuits may result in one or more corrective steps, including:

- Hiring or reinstating, with or without back pay, an individual who was directly affected by the discrimination;
- Removing a false performance review or false warning from an employee's personnel file;
- Posting notices to employees about their rights and about your obligations; and/or
- Educating all personnel involved in the recruiting, hiring, and onboarding processes, about the proper procedures for verifying an individual's employment eligibility and complying with anti-discrimination laws.

The court may award attorneys' fees to prevailing parties other than the United States under certain circumstances.

If you violate the anti-discrimination provision of the INA, you may be ordered to pay a civil money penalty. For more information on civil penalties, contact IER.

If EEOC determines that you have committed national origin or other prohibited discrimination under Title VII or other federal law, you may be ordered to stop the prohibited practice and to take one or more corrective steps, including:

- Hiring, reinstating, or promoting with back pay, benefits, and retroactive seniority;
- Posting notices to employees about their rights and about your obligations; and/or
- Removing incorrect information, such as a false warning, from an employee's personnel file.

Under Title VII, compensatory damages may also be available when the EEOC determines there was intentional discrimination. Damages may compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages may be available if you acted with malice or reckless indifference.

A court may also require you to pay attorneys' fees, expert witness fees, and court costs.

10.7 Additional Information

For more information about discrimination based on national origin, citizenship, or immigration status, contact IER's employer hotline at 800-255-8155 (TTY for the deaf or hard of hearing: 800-237-2515); or visit its website at justice.gov/ier.

For more information on Title VII and EEOC policies and procedures, call 800-669-4000 (TTY for the deaf or hard of hearing: 800-669-6820), or visit EEOC's website at eeoc.gov.

10.8 Penalties for Prohibited Practices

Unlawful Employment Civil Penalties

DHS considers you to have knowingly hired an unauthorized alien if, after Nov. 6, 1986, you enter into, renegotiate, or extend a contract or subcontract to obtain the labor of an alien you know is not authorized to work in the United States.

DHS or an administrative law judge may impose penalties if an investigation reveals that you knowingly hired or knowingly continued to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements with respect to employees hired after Nov. 6, 1986.

DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. If you receive an NIF, you may request a hearing before an administrative law judge. If DHS does not receive your hearing request within 30 days, DHS will impose the penalty and issue a Final Order, which cannot be appealed.

Hiring or Continuing to Employ Unauthorized Aliens

If DHS or an administrative law judge determines that you have knowingly hired unauthorized aliens (or are continuing to employ aliens knowing they are or have become unauthorized to work in the United States), they may order you to cease and desist from such activity and pay a civil money penalty for each offense.

Failing to Comply With Form I-9 Requirements

If you fail to properly complete, retain, and/or make Forms I-9 available for inspection as required by law, you may face civil money penalties for each violation. In determining the amount of the penalty, DHS considers:

- The size of your business;
- Your good faith;
- The seriousness of the violation;
- Whether the individual was an unauthorized alien; and
- The history of your previous violations, if any.

Requiring Indemnification

If an administrative law judge finds that you required an employee to pay a bond or indemnity in the event you are held liable for violating employer sanctions laws, the judge may order you to pay a civil money penalty for each bond or indemnity you required, as well as return the bond or indemnity, either to the person who you required to pay it, or, if that person cannot be located, to the U.S. Treasury.

Penalties for Repeated Violations

If the attorney general has reasonable cause to believe you engaged in a pattern or practice of employment, recruitment, or referral that violates INA section 274A (a)(1)(A) or (2) (which can be found at 8 U.S.C. 1324a (a)(1)(A) or (2)), they may bring civil action in the appropriate U.S. District Court requesting relief, including a

permanent or temporary injunction, restraining order, or other order against you or your business. A pattern or practice is engaging in regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts.

Good Faith Defense

If you can show that you have, in good faith, complied with Form I-9 requirements, then you may have established a "good faith" defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that you had actual knowledge that the employee was not authorized to work.

A good faith attempt to comply with the paperwork requirements of INA section 274A(b) may be adequate, notwithstanding a technical or procedural failure to comply, unless you fail to correct a violation within 10 days of DHS notifying you.

Unlawful Employment Criminal Penalties

Engaging in a Pattern or Practice of Knowingly Hiring or Continuing to Employ Unauthorized Aliens

If you or your business are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing they are or have become unauthorized to work in the United States) after Nov. 6, 1986, you may face fines and/or six months imprisonment.

Engaging in Fraud or False Statements, or Otherwise Misusing Visas, Immigration Permits, and Identity Documents

You may be fined and/or imprisoned for up to five years if you:

- Make a false statement or attestation to satisfy the employment eligibility verification requirements;
- Use fraudulent identification or employment authorization documents; or
- Use documents that were lawfully issued to another person.

Other federal criminal statutes may provide higher penalties in certain fraud cases.

Civil Document Fraud

If a DHS investigation reveals that you have knowingly committed or participated in acts relating to document fraud, DHS may take action. DHS will issue an NIF when it intends to impose penalties. If you receive an NIF, you may request a hearing before an administrative law judge. If DHS does not receive a request for a hearing within 30 days, it will impose the penalty and issue a Final Order, which is final and cannot be appealed.

If DHS or an administrative law judge finds that you have violated INA section 274C, they may order you to cease and desist from such behavior and to pay a civil money penalty.

11.0 Instructions for Agricultural Recruiters and Referrers for a Fee

Under the INA, it is unlawful for an agricultural association, agricultural employer, or farm labor contractor to hire, recruit, or refer for a fee an individual for employment in the United States without complying with employment eligibility verification requirements. This provision applies to agricultural associations, agricultural employers, and farm labor contractors who recruit persons for a fee, and those who refer persons or provide documents or information about persons to employers in return for a fee.

"Recruiter or referrer for a fee" is limited to agricultural associations, agricultural employers, or farm labor contractors as defined in Section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470 (29 U.S.C. 1802).

This limited class of recruiters and referrers for a fee must complete Form I-9 when you hire a person they refer. You and the employee must fully complete Form I-9 within three business days of the date employment begins, or, in the case of an individual hired for less than three business days, at the time employment begins.

Recruiters and referrers for a fee may designate agents, such as national associations or employers, to complete the verification procedures on their behalf. If they designate you as the agent, you should provide the recruiter or referrer with a photocopy of Form I-9. However, recruiters and referrers for a fee are still responsible for complying with the law and may be found liable for violations of the law.

Recruiters and referrers for a fee must have a Form I-9 for each individual they recruit or refer that is on an employer's payroll. The Form I-9 must be retained for three years after the individual stops working for the employer. They must also make Form I-9 available for inspection by a DHS, DOL, or IER officer.

If DHS or DOL suspects that you have violated employment eligibility verification requirements, they may obtain warrants based on probable cause to enter your premises without advance notice.

The penalties for failing to comply with Form I-9 requirements and for requiring indemnification apply to this limited class of recruiters and referrers for a fee.

All recruiters and referrers for a fee are still liable for knowingly recruiting or referring for a fee aliens not authorized to work in the United States.

12.0 Acceptable Documents for Verifying Employment Authorization and Identity

This section provides many samples of documents from the Form I-9 Lists of Acceptable Documents that an employee might present to establish their employment authorization and identity. However, this section does not provide all of the variations of a particular document, and new versions of a document may become available after we publish this handbook. We do not expect you to be a document expert, but we do expect you to accept documents that reasonably appear to be genuine and to relate to the person presenting them.

An employee must present a document or combination of documents from List A (which shows both identity and employment authorization) or one document from List B (which shows identity) and one document from List C (which shows employment authorization) or an acceptable receipt of those documents within three business days of the date work for pay begins. The employee that presents a receipt must present the actual document when the receipt validity period ends, or when they receive the document, whichever comes first. Do not require an employee who presents a List A document to present List B and List C documents. Do not require an employee who presents List B and List C documents to present a List A document.

You cannot accept a receipt showing the employee has applied for an initial grant of employment authorization. You also cannot accept receipts if employment is for less than three business days. For a list of acceptable receipts for Form I-9, see Table 1 in Section 4.3, Acceptable Receipts. For examples of acceptable employment authorization documents issued by the Department of Homeland Security (List C #7), please visit uscis.gov/i-9-central.

Some employees (including lawful permanent residents, asylees, and refugees) may present documents with an expiration date. You may need to reverify the employee's authorization to work when certain List A or List C documents expire. See Section 5.0, Completing Section 3, for more information on reverification. USCIS includes expiration dates on some documents issued to individuals with permanent employment authorization. If your employee's document contains a future expiration date:

- It does not preclude continuous employment authorization;
- It does not mean USCIS will not grant them subsequent employment authorization; and
- Do not consider the expiration date when determining whether an individual is qualified for a particular position. If you do, you may violate employment discrimination laws.

For more information on unlawful discrimination, see Section 10.0, Unlawful Discrimination and Penalties for Prohibited Practices.

LIST A: Documents That Establish Both Identity and Employment Authorization

All documents must be unexpired.

1. U.S. passport or U.S. passport card
2. Form I-551, Permanent Resident Card or Alien Registration Receipt Card (this is commonly called a Green Card.)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
4. Form I-766, Employment Authorization Document (EAD) that contains a photograph. However, in certain circumstances, an EAD past its "Card Expires" date qualifies as an unexpired EAD. See Section 4.4, Automatic Extensions of Employment Authorization Documents in Certain Circumstances, for more information.
5. For nonimmigrant aliens authorized to work for a specific employer incident to status, which means they are authorized to be employed based on their nonimmigrant status, a foreign passport with Form I-94 bearing the same name as the passport and an endorsement of their nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

LIST B: Documents That Establish Identity

All documents must be unexpired.

1. Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address (This selection does not include the driver's license or ID card issued by a state or outlying possession of the United States in Item 1 of this list.)
3. School ID card with a photograph
4. Voter's registration card
5. U.S. military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day care or nursery school record

LIST C: Documents That Establish Employment Authorization

All documents must be unexpired.

1. A Social Security Account Number card, unless the card includes one of the following restrictions:
   - NOT VALID FOR EMPLOYMENT
   - VALID FOR WORK ONLY WITH INS AUTHORIZATION
   - VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Certification of report of birth issued by the U.S. Department of State (Forms DS-1350, FS-545, FS-240)
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying territory of the United States bearing an official seal
4. Native American tribal document
5. Form I-197, U.S. Citizen Identification Card
6. Form I-179, Identification Card for Use of Resident Citizen in the United States
7. Employment authorization document issued by the Department of Homeland Security. For examples, please visit uscis.gov/i-9-central. (This does not include Form I-766, Employment Authorization Document, from List A.)

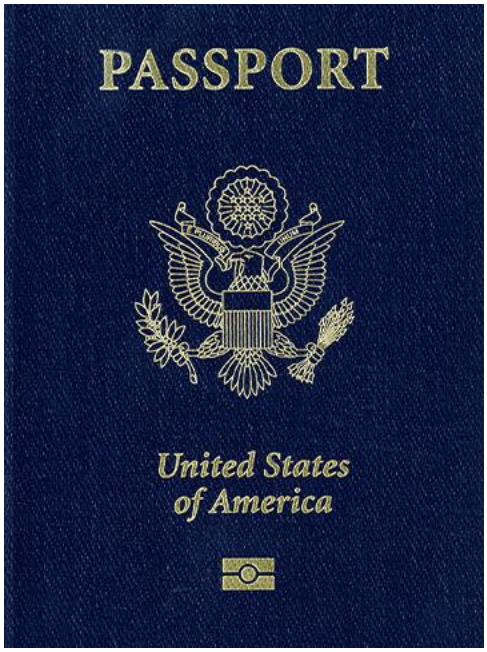
12.1 List A Documents That Establish Identity and Employment Authorization

The illustrations do not reflect the actual size of the documents.

U.S. Passport

The U.S. Department of State issues the U.S. passport to U.S. citizens and noncitizen nationals. A small number of versions still in circulation may differ from the main versions shown here.

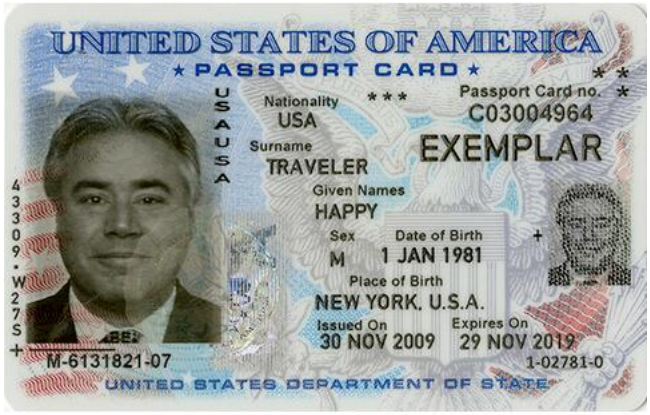
Current U.S. passport cover and interior



U.S. Passport Card

The U.S. Department of State began issuing the passport card in July 2008. The passport card is a wallet-size card that can only be used for land and sea travel between the United States and Canada, Mexico, the Caribbean, and Bermuda.

Passport card front and back



Form I-551, Permanent Resident Card (Green Card)

On May 1, 2017, USCIS began issuing a redesigned Form I-551, which contains the bearer's photo on the front and back, name, USCIS number, date of birth, laser-engraved fingerprint and card expiration date. This card does not have a signature or a black stripe on the back. Some cards issued after May 1, 2017, may display the previous design format. Both this and previous versions of Form I-551 remain valid until the expiration date shown on the card.

Current Form I-551, front and back

USCIS began issuing this version of Form I-551 in May 2010. This redesign changed the card color to green. The card contains the bearer's photo, name, USCIS number, date of birth, laser-engraved fingerprint, and card expiration date. Currently, the USCIS Number is also the cardholder's alien registration number (A-Number). This number is also located on the back of the card.

These cards may or may not contain a signature. A signature is not required for the card to be acceptable for Form I-9 purposes.

Previous Form I-551, front and back

Another older version of the Form I-551 shows the DHS seal and contains a detailed hologram on the front of the card. Each card is personalized with an etching showing the bearer's photo, name, fingerprint, date of birth, A-Number, and the card expiration date.

Some employees may also have older Resident Alien cards, issued by the U.S. Department of Justice, Immigration and Naturalization Service, which do not have expiration dates and are valid indefinitely. These cards are peach in color and contain the bearer's fingerprint and photograph.

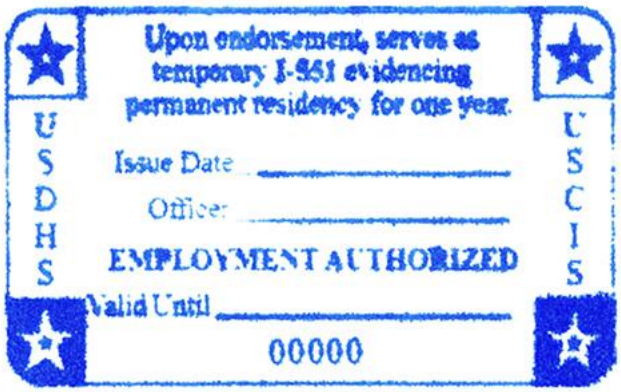
Older Form I-551, front and back

Foreign Passport with I-551 Stamp or MRIV

USCIS uses either an I-551 stamp or a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV) to indicate temporary evidence of lawful permanent residence. Sometimes, if no foreign passport is available, USCIS will place the I-551 stamp on a Form I-94 and affix a photograph of the bearer to the form. This document is considered a receipt.

Unexpired Foreign Passport with I-551 Stamp

The temporary Form I-551 MRIV is evidence of permanent resident status for one year from the date of admission.



Temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)

Form I-766, Employment Authorization Document

On May 1, 2017, USCIS began issuing a redesigned Form I-766, Employment Authorization Document, (EAD) to certain individuals with temporary authorization to work in the United States. The card contains the bearer's photograph on the front and back, name, USCIS number, card number, date of birth, laser-engraved fingerprint, and the card expiration date. Cards may contain one of the following notations below the expiration date:

- "Not Valid for Reentry to U.S.;"
- "Valid for Reentry to U.S.;" or
- "Serves as I-512 Parole."

Some EADs issued after May 1, 2017, may still display the previous design format. Both the existing and new EADs will remain valid until the expiration date shown on the card.

Current EAD with "NOT VALID FOR REENTRY TO U.S.," front and back

The older version of the EAD contains the bearer's photograph, fingerprint, card number, USCIS Number, birth date, and signature, along with a holographic film and the DHS seal. The expiration date is located at the bottom of the card. Cards may contain one of the following notations below the expiration date:

- "Not Valid for Reentry to U.S.;"
- "Valid for Reentry to U.S.;" or
- "Serves as I-512 Advance Parole."

Form I-20 accompanied by Form I-94

For curricular practical training, F-1 nonimmigrant students with a Form I-94, Arrival/Departure Record, must also have Form I-20, Certificate of Eligibility for Nonimmigrant Students, endorsed with employment authorization by the designated school official. USCIS issues an EAD to all F-1 students who are authorized for optional practical training (OPT) and M-1 students authorized for practical training. See Section 6.4.2, F-1 and M-1 Nonimmigrants, for more information on Form I-20.

Form I-20 accompanied by Form I-94

SEVIS ID: N0004705512 (F-1) **NAME: John Doe**

EMPLOYMENT AUTHORIZATIONS

TYPE	FULL/PART-TIME	STATUS	START DATE

EMPLOYER INFORMATION

TYPE		AUTHORIZATION DATES	
CPT		01 JULY 2016 - 15 JULY 2016	
EMPLOYER NAME	**START DATE**	**END DATE**	**CITY & ST**
SEVP applied labs	01 JULY 2016	15 JULY 2016	Arlington

CHANGE OF STATUS/CAP-GAP EXTENSION

AUTHORIZED REDUCED COURSE LOAD

CURRENT SESSION DATES

CURRENT SESSION START DATE	CURRENT SESSION END DATE
25 AUGUST 2017	30 MAY 2018

TRAVEL ENDORSEMENT

This page, when properly endorsed, may be used for re-entry of the student to attend the same school after a temporary absenc
endorsement is valid for one year.

SCHOOL OFFICIAL	TITLE	SIGNATURE	DATE ISSUE
		X	
		X	
		X	
		X	

SEVIS ID: N0004705512

SURNAME/PRIMARY NAME Doe Smith	**GIVEN NAME** John
PREFERRED NAME John Doe-Smith	**PASSPORT NAME**
COUNTRY OF BIRTH UNITED KINGDOM	**COUNTRY OF CITIZENSHIP** UNITED KINGDOM
DATE OF BIRTH 01 JANUARY 1982	**ADMISSION NUMBER**
FORM ISSUE REASON INITIAL ATTENDANCE	**LEGACY NAME** John Doe-Smith

SCHOOL INFORMATION

SCHOOL NAME SEVP School for Advanced SEVIS Studies SEVP School for Advanced SEVIS Studies	**SCHOOL ADDRESS** 9002 Nancy Lane, Ft. Washin
SCHOOL OFFICIAL TO CONTACT UPON ARRIVAL Helene Robertson PDSO	**SCHOOL CODE AND APPROVAL I** BAL214F44444000 03 APRIL 2017

PROGRAM OF STUDY

EDUCATION LEVEL DOCTORATE	**MAJOR 1** Economics, General 45.0601	**MAJOR 2** None 00.00
PROGRAM ENGLISH PROFICIENCY Student is proficient	**ENGLISH PROFICIENCY NOTES** Student is proficient	**EARLIEST A** 25 AUGUST
START OF CLASSES 01 SEPTEMBER 2017	**PROGRAM START/END DATE** 01 SEPTEMBER 2017 - 30 MAY 2023	

FINANCIALS

ESTIMATED AVERAGE COSTS FOR: 9 MONTHS		**STUDENT'S FUNDING FOR:** 9 MON
Tuition and Fees	$ 23,000	Personal Funds
Living Expenses	$ 6,000	Funds From This School
Expenses of Dependents (0)	$ 3,000	Funds From Another Source
Other	$ 0	On-Campus Employment
TOTAL	$ 32,000	TOTAL

REMARKS

Orientation begins 8/25/2017. Please report to ISSS upon arrival.

SCHOOL ATTESTATION

I certify under penalty of perjury that all information provided above was entered before I signed this form and is true and corr
States after review and evaluation in the United States by me or other officials of the school of the student's application, transc
and proof of financial responsibility, which were received at the school prior to the execution of this form. The school has dete
qualifications meet all standards for admission to the school and the student will be required to pursue a full program of study
designated school official of the above named school and am authorized to issue this form.

X	**DATE ISSUED**
SIGNATURE OF: Helene Robertson, PDSO	04 May 2017

STUDENT ATTESTATION

I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay. I certify th
refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the Unite

purpose of pursuing a full program of study at the school named above. I also authorize the named school to release any inform pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status. **Parent or guardian, and student, must sign if student is**

X		
SIGNATURE OF: John Doe Smith		**DATE**
	X	
NAME OF PARENT OR GUARDIAN	**SIGNATURE**	**ADDRESS (city/state o**

ICE Form I-20 A-B (3/31/2018)

See Form I-94 below.

Form DS-2019 accompanied by Form I-94

J-1 nonimmigrant exchange visitors must have a Form I-94, Arrival/Departure Record, accompanied by an unexpired Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, issued by the U.S. Department of State, that specifies the sponsor. J-1 exchange students also need a letter from their responsible officer authorizing their employment. See Section 6.4.1, Exchange Visitors and Students (J-1s), for more information on DS-2019.

DS-2019 accompanied by Form I-94

U.S. Department of State

CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR STATUS (J-NONIMMIG

1. Surname/Primary Name: Beauregard		**Given Name:** Bonita		
Date of Birth *(mm-dd-yyyy)*: 06-12-1980	**City of Birth:** Lyon	**Country of Birth:** FRANCE	**Citizenship Country Code:** FR	**Citizenship Country** FRANCE
Legal Permanent Residence Country Code: FR	**Legal Permanent Residence Country:** FRANCE	**Position Code:** 115	**Position:** PROFESSIONALS AND SCIENTI	
Primary Site of Activity: Exempt from Pre-placement			CENTRAL GOVERNMENT	

2. Program Sponsor: Sujata's June 11th **Program Number**

Participating Program Official Description:
PROFESSOR: RESEARCH SCHOLAR; STUDENT ASSOCIATE; STUDENT BACHELORS; STUDENT DOCTORATE; STUDENT INTERN; STUDENT MASTERS; STUDENT NON-DEGREE

tcomments

Purpose of this form: Replace a DS-2019 form (Damaged)

3. Form Covers Period:	**4. Exchange Visitor Category:**
From *(mm-dd-yyyy)*: 01-12-2015	RESEARCH SCHOLAR
To *(mm-dd-yyyy)*: 12-31-2018	**Subject/Field Code:** 26.0907 **Subject/Field Code Remarks:** None at this time.

5. During the period covered by this form, the total estimated financial support ***(in U.S. $)*** **is to be provided to the exchange visitor by:**

6. **U.S. DEPARTMENT OF STATE / DHS USE OR CERTIFICATION BY RESPONSIBLE OFFICER OR ALTERNATE RESPONSIBLE OFFICER THAT A NOTIFICATION COPY OF THIS FORM HAS BEEN PROVIDED TO THE U.S. DEPARTMENT OF STATE *(INCLUDE DATE)*.**

7. Mary Hafer

Name of Official Preparing Form

1000 Motor Vehicle Blvd.
Detriot, MI 48201

Address of Responsible Officer or Alternate Responsible Officer

Signature of Responsible Officer or Alternate Responsible Officer

8. **Statement of Responsible Officer for Releasing Sponsor *(FOR TRANSFER OF PROGRAM)***

Effective date *(mm-dd-yyyy)*: _____. Transfer of this exchange visitor from program number _____ sponso
to the program specified in item 2 is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961, as ar

Signature of Responsible Officer or Alternate Responsible Officer

PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-484, AS AMENDED *(see item 1(a) of page 2).*

The Exchange Visitor in the above program:

1. ☐ Not subject to the two-year residence requirement.
2. ☐ Subject to two-year residence requirement based on:
   - A. ☐ Government financing and/or
   - B. ☐ The Exchange Visitor Skills List and/or
   - C. ☐ PL 94-484 as amended

(ALL USAID PARTICIPANTS G-2-00263 AND ALL ALIEN PHYSICIANS SPONSORED BY P-3-04510 ARE SUBJECT TO THE TWO-YEAR HOME RESIDENCE REQUIREMENT)

Name

Title

Signature of Consular or Immigration Officer

Date *(mm-dd-yyyy)*

THE U. S. DEPARTMENT OF STATE RESERVES THE RIGHT TO MAKE FINAL DETERMINATION REGARDING 212 *(e)*.

TRAVEL V

***EXCEPT:** Ma
Scholars and 4 n

(1) Exchange Vi

Signature

(2) Exchange Vi

Signature o

EXCHANGE VISITOR CERTIFICATION: I have read and agree with the statement in item 2 on page 2 of this document.

Signature of Applicant

Place

DS-2019
07-2011

See Form I-94 below.

Form I-94, Arrival/Departure Record

CBP and USCIS issue Form I-94, Arrival/Departure Record, to nonimmigrants. This document indicates the bearer's class of admission, date of entry, and date their immigration status expires. Generally, employees download it from cbp.gov. If an employee presents a paper Form I-94, it may show a stamped or handwritten date. They may present Form I-94 with documents that Form I-9 specifies are valid as a combination of documents, such as Form I-94 presented with a foreign passport, and Form DS-2019 or Form I-20.

Electronic Form I-94

U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number | I-94 FAQ

Admission (I-94) Number Retrieval

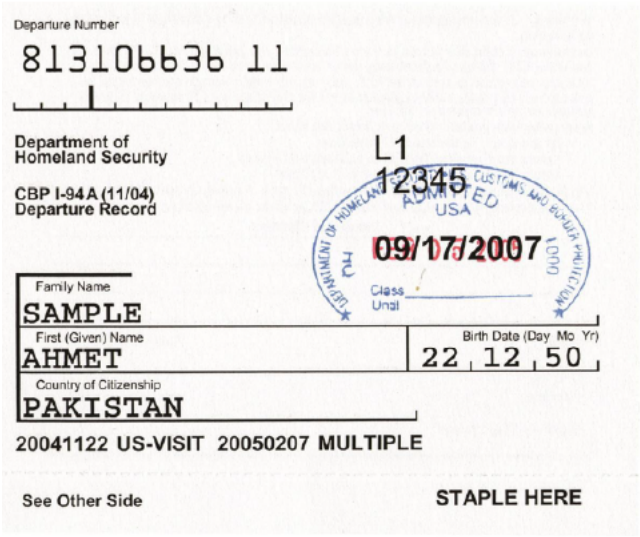
Admission (I-94) Record Number: 69000888062

Admit Until Date (MM/DD/YYYY): 10/10/2012

Details provided on Admission(I-94) form:

Family Name:	LI
First (Given) Name:	LYDIA
Birth Date (MM/DD/YYYY):	01/01/1990
Passport Number:	P123123213
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	04/11/2012
Class of Admission:	B1

Form I-94, Arrival/Departure Record

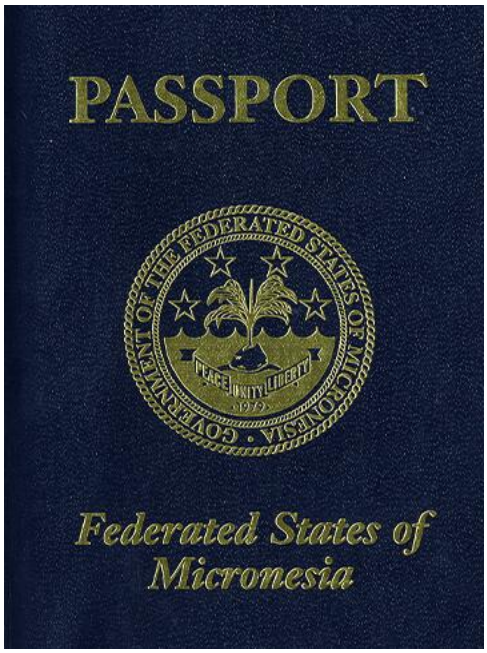


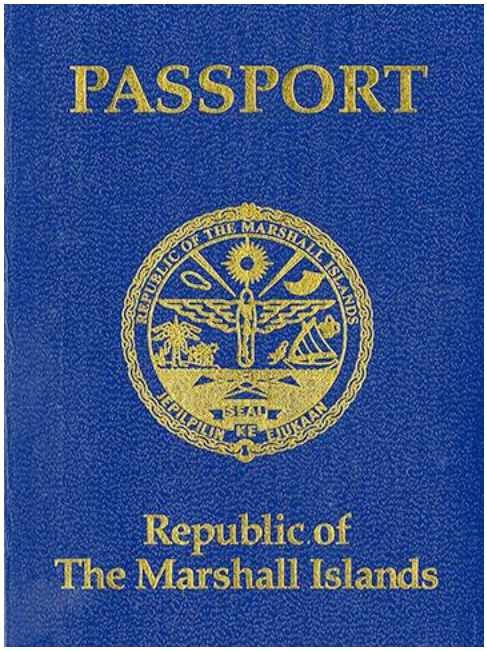
Passport of the Federated States of Micronesia and the Republic of the Marshall Islands

In 2003, Compacts of Free Association (CFA) between the United States and the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) were amended to allow citizens of these countries to work in the United States without obtaining an EAD.

For Form I-9 purposes, citizens of these countries may present FSM or RMI passports accompanied by a Form I-94 indicating nonimmigrant admission under the CFA, which are acceptable documents under List A. The exact notation on Form I-94 may vary and is subject to change. The notation on Form I-94 typically states “CFA/FSM” for an FSM citizen and “CFA/MIS” for an RMI citizen.

Passport of the Federated States of Micronesia and the Republic of the Marshall Islands





12.2 List B Documents That Establish Identity

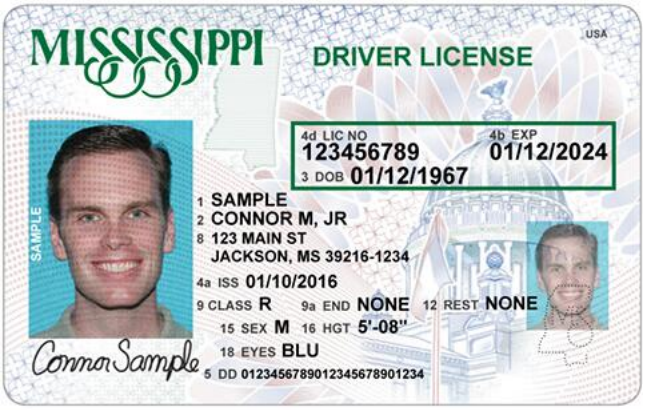
The illustrations do not reflect the actual size of the documents.

State-issued Driver’s License

A driver’s license can be issued by any state or territory of the United States (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) or by a Canadian government authority. You may accept a driver's license if it contain a photograph or, if it does not contain a photograph, it includes identifying information such as name, date of birth, gender, height, eye color, and address.

Some states may place restrictive notations on their licenses. For Form I-9 purposes, you may accept these licenses.

Driver’s License from Virginia



State-issued ID Card

An ID card can be issued by any state (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) or local government. You may accept an ID card if it contains a photograph or, if it does not contain a photograph, it includes identifying information, such as name, date of birth, gender, height, eye color, and address.

Some states may place restrictive notations on their ID cards. For Form I-9 purposes, you may accept these cards.

Identification card from Virginia

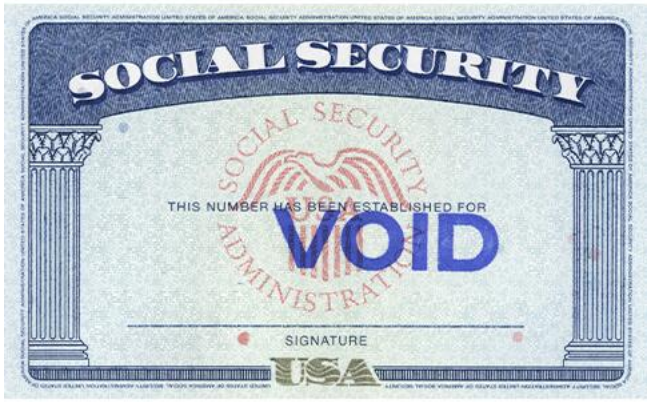
12.3 List C Documents That Establish Employment Authorization

The illustrations do not reflect the actual size of the documents.

U.S. Social Security Card

The Social Security Administration (SSA) issues U.S. Social Security cards (although the U.S. Department of Health and Human Services issued older versions). SSA issues unrestricted Social Security cards to U.S. citizens and individuals lawfully admitted to the United States on a permanent basis. This card shows a name and Social Security number and allows the individual to work without restriction for any employer. A laminated card is acceptable but you cannot accept metal or plastic reproductions.

Acceptable U.S. Social Security card



Unacceptable Social Security Cards

You cannot accept a restricted Social Security card for Form I-9. If your employee presents a restricted Social Security card, ask the employee to provide a different document from List C or a document from List A. SSA issues restricted Social Security cards to individuals lawfully admitted to the United States on a temporary basis. This card shows a name and Social Security number and is stamped with one of the following restrictions:

- "VALID FOR WORK ONLY WITH DHS AUTHORIZATION" (See example below)
- "VALID FOR WORK ONLY WITH INS AUTHORIZATION"
- "NOT VALID FOR EMPLOYMENT"

Certifications of Birth Issued by the U.S. Department of State

These documents may vary in color and paper used. All will include a raised seal of the office that issued the document, and may contain a watermark and raised printing.

F-545, Certification of Birth Abroad, issued by the U.S. Department of State


DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

Certification of Birth Abroad

of a Citizen of the United States of America

This is to certify that according to records on file in this Office

JONATHAN WILLIAMS MOORE

Sex MALE was born at US NAVAL HOSPITAL, OKINAWA, JAPAN

on AUGUST 13, 1990 Report of birth recorded on SEPTEMBER 14, 1990

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the Consular Service of the United States of America at NAHA, JAPAN

this 14TH day of SEPTEMBER 19 90

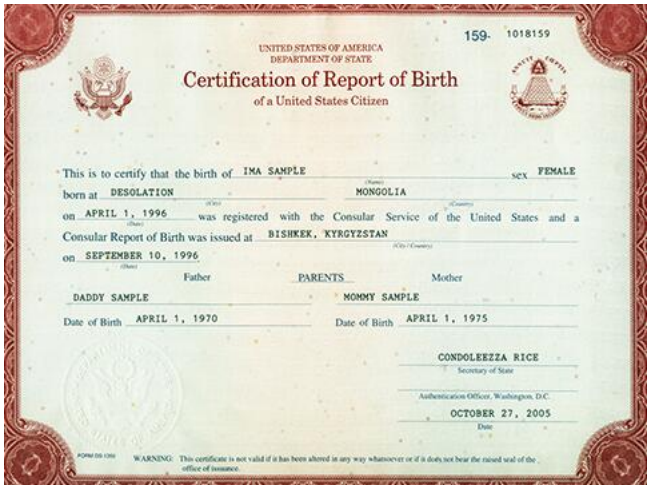
(SEAL)

CONSUL of the United States of America

WARNING: This certificate is not valid if it has been altered in any way whatsoever or if it does not bear the raised seal of the office of issuance.

Form FS-545

DS-1350, Certification of Report of Birth, issued by the U.S. Department of State


159- 1018159

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

Certification of Report of Birth

of a United States Citizen

This is to certify that the birth of IMA SAMPLE (Name) sex FEMALE

born at DESOLATION (City) MONGOLIA (Country)

on APRIL 1, 1996 (Date) was registered with the Consular Service of the United States and a Consular Report of Birth was issued at BISHKEK, KYRGYZSTAN (City/Country)

on SEPTEMBER 10, 1996 (Date)

PARENTS

Father: DADDY SAMPLE — Date of Birth APRIL 1, 1970

Mother: MOMMY SAMPLE — Date of Birth APRIL 1, 1975

CONDOLEEZZA RICE
Secretary of State

Authentication Officer, Washington, D.C.

OCTOBER 27, 2005
Date

FORM DS-1350 WARNING: This certificate is not valid if it has been altered in any way whatsoever or if it does not bear the raised seal of the office of issuance.

FS-240, Consular Report of Birth Abroad, issued by the U.S. Department of State

Birth Certificate

You may only accept an original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States that bears an official seal. Versions will vary by state and year of birth.

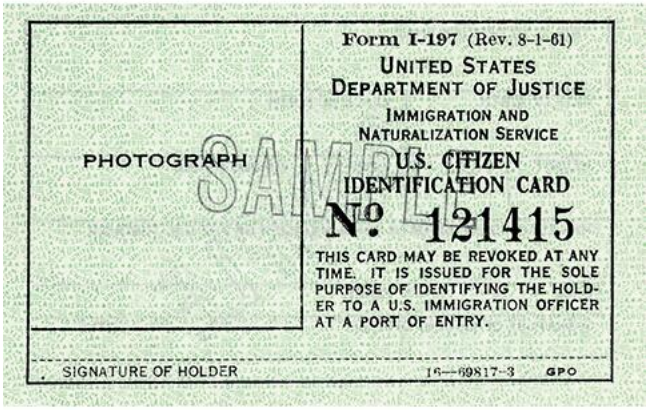
You may only accept a Puerto Rico birth certificate issued on or after July 1, 2010.

Birth Certificate

Form I-197, U.S. Citizen Identification Card

The former Immigration and Naturalization Service issued Form I-197 to naturalized U.S. citizens. This card does not contain an expiration date and is valid indefinitely.

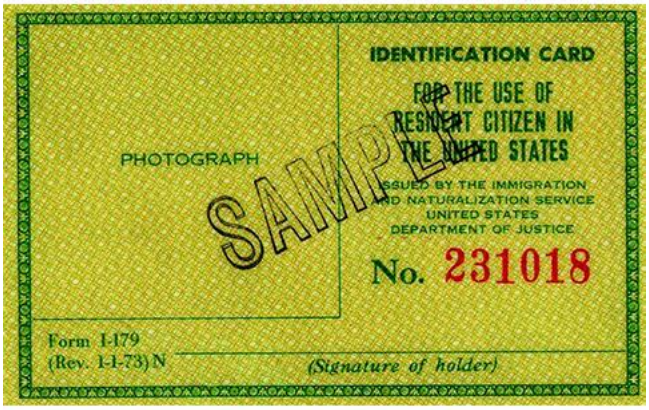
Form I-197, U.S. Citizen Identification Card



Form I-179, Identification Card for Use of Resident Citizen in the United States

INS issued Forms I-179 to U.S. citizens who are residents of the United States. This card does not contain an expiration date, and is valid indefinitely.

Form I-179, Identification Card for Use of Resident Citizen in the United States



13.0 Some Questions You May Have About Form I-9

Employers and employees can find more Form I-9 information on I-9 Central at uscis.gov/i-9-central.

1. Do citizens and noncitizen nationals of the United States need to complete Form I-9?

Yes. While citizens and noncitizen nationals of the United States are automatically eligible for employment, they too must present the required documents and complete Form I-9, Employment Eligibility Verification. U.S. citizens include persons born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. U.S. noncitizen nationals are persons who owe permanent allegiance to the United States, which include those born in American Samoa, including Swains Island. Citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) are not noncitizen nationals, however they are eligible to work in the United States.

2. Do I need to complete Form I-9 for independent contractors or their employees?

No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete Form I-9 for that company's employees. The construction company is responsible for completing Form I-9 for its own employees. However, you may not use a contract, subcontract, or exchange to obtain the labor or services of an employee you know is unauthorized to work.

3. What happens if I properly complete and retain a Form I-9 and DHS discovers that my employee is not actually authorized to work?

You cannot be charged with a verification violation. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized individual, unless the government can show you had knowledge of the employee's unauthorized status.

4. Can I ask an employee to show a specific document when completing Form I-9??

No. The employee may choose which document(s) they present from the Lists of Acceptable Documents. You must accept any document (from List A) or combination of documents (one from List B and one from List C) listed on Form I-9 and found in Section 12.0 that reasonably appear to be genuine and to relate to the person presenting them. To do otherwise could be an unfair immigration-related employment practice that violates the anti-discrimination provision in the INA. You must not treat individuals who look and/or sound foreign differently in the recruiting, hiring, or verification process.

For more information about discrimination during the Form I-9 process, contact IER's employer hotline at 800-255-8155 (TTY for the deaf or hard of hearing: 800-237-2515) or visit their website at justice.gov/ier.

Note: Employers who participate in E-Verify can only accept a List B document if it contains a photograph.

5. What is my responsibility concerning the authenticity of document(s) an employee presents to me?

You must physically examine the original document(s), and if they reasonably appear to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear to be genuine or to relate to the person presenting them, you must not accept them.

However, you must provide the employee with an opportunity to present other documents from the Lists of Acceptable Documents.

6. May I accept a copy of a document from an employee?

No. Employees must present original documents. The only exception is that an employee may present a certified copy of a birth certificate.

7. When can employees present receipts for documents in place of actual documents from the Lists of Acceptable Documents?

The "receipt rule" is designed to cover situations in which an employee is authorized to work at the time of initial hire or reverification, but does not have the actual document listed on the Lists of Acceptable Documents. You cannot accept a receipt showing the employee has applied for an initial grant of employment authorization. See Section 4.3, Acceptable Receipts, for more information.

8. My new employee presented two documents to complete Form I-9, each containing a different last name. One document matches the name she entered in Section 1. The employee explained that she had just gotten married and changed her last name, but had not yet changed the name on the other document. Can I accept the document with the different name?

You may accept a document with a different name than the name entered in Section 1 as long as the document reasonably relates to the employee. You also may attach a brief memo to the employee's Form I-9 stating the reason for the name discrepancy, along with any supporting documentation she provides. An employee may provide documentation to support a name change, but is not required to do so. If you determine the document containing a different name does not reasonably appear to be genuine and to relate to the employee, you may ask her to provide other documents from the Lists of Acceptable Documents on Form I-9.

9. The name on the document my employee presented to me is spelled slightly differently than the name they entered in Section 1 of Form I-9. Can I accept this document?

If the document contains a slight spelling variation, and the employee has a reasonable explanation for the variation, the document is acceptable as long as you are satisfied that the document otherwise reasonably appears to be genuine and to relate to the employee.

10. My employee's EAD expired and now they want to show me a Social Security card. Do I need to see a current DHS document?

No. During reverification, you must allow an employee to choose what document to present from either List A or List C. If the employee present an unrestricted Social Security card, the employee does not also need to present a current DHS document. However, if the employee present a restricted Social Security card, you must reject it since it is not an acceptable Form I-9 document and ask the employee to choose a different document from List A or C.

Summary of Changes

The purpose of this document is to outline significant changes made to the M-274, Handbook for Employers: Guidance for Completing Form I-9.

Updates Based on Form I-9 Revision 10/21/2019

- Section 2.0: Clarified who can serve as an authorized representative to correspond with revisions in the Form I-9 Instructions.
- Section 12.0: Clarified that the second List B document in the List of Acceptable Documents does not include the driver's license or ID card issued by a state or outlying possession of the United States to correspond with revisions in the Form I-9 Instructions.
- Section 12.0: Clarified that the employment authorization document issued by the Department of Homeland Security in List C of the List of Acceptable Documents does not include Form I-766, Employment Authorization Document, from List A to correspond with revisions in the Form I-9 Instructions.

Major Guidance Changes

- Sections 4.4 and 6.4.2: Revised guidance to clarify that employers should enter expiration date changes based on automatic extensions of documents in the Additional Information field in Section 2 and eliminated instructions to have the employee cross out and initial information in the "Alien authorized to work until" expiration date field in Section 1. This ensures greater legibility during Form I-9 inspections.
- Section 6.4.2: Revised cap-gap extension document requirements to better align with regulations. Employers will enter the receipt number from Form I-797C, Notice of Action as the employee's Document Number in Section 2. Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, is no longer required.

New Content

- Section 4.4: How to complete Form I-9 with EADs automatically extended by Federal Register notices.
- Section 6.2: Guidance on verifying employment authorization for Native American employees born in Canada.
- Section 7.1: Guidance for state employment agencies that choose to complete Form I-9 for individuals they refer and for employers of individuals referred by a state employment agency.

Major Clarifications

- Section 3.0: The purpose of the Preparer/Translator Supplement.
- Section 6.4.1: Determining the document expiration date that F-1 and J-1 nonimmigrant employees should enter in the Section 1 "Alien authorized to work until" expiration date field.
- Section 9.0-9.2: How to calculate Form I-9 retention, retention guidelines, and electronic Form I-9 requirements.
- Section 10: A review of prohibited Form I-9 practices and penalties and the agencies responsible for enforcement.

Plain Language Updates

- Removed duplicate content.
- Merged certain sections for better logic flow.
    - Sections 5 and 6 merged in Section 5; subsequent chapters renumbered.

- Section 13.0: Incorporated questions and answers into the body of the Handbook whenever practicable to comply with new USCIS style requirements.

Table of Contents

Office of Special Counsel
for Immigration-Related Unfair Employment Practices
U.S. Department of Justice Civil Rights Division

Employer Best Practices During Worksite Enforcement Audits

DO

- Develop a transparent process for interacting with employees during the audit, including communicating with employees that the employer is subject to an ICE audit.
- Provide all workers with a reasonable amount of time to correct discrepancies in their records identified by ICE. Treat all workers in the same manner during the audit, without regard to national origin or citizenship status. This means that all workers with like discrepancies who are asked to present additional documents are provided with the same timeframes and the same choice of Form I-9 documents to present.
- If your workers are represented by a union, inform the union of the ICE audit and determine whether a collective bargaining agreement triggers any obligations.
- Inform employees from whom you seek specific information that you are seeking this information in response to an ICE audit.
- Communicate in writing with employees from whom you seek information, and describe the specific basis for the discrepancy and/or what information you need from them. Follow the instructions on the ICE notice and the instructions for the Form I-9 when seeking to correct Form I-9 defects, including the Lists of Acceptable Documents and the anti-discrimination notice.

DON'T

- Selectively verify the employment eligibility of certain employees based on their national origin or citizenship status based on the receipt of an ICE Notice of Inspection.
- Terminate or suspend employees without providing them with notice and a reasonable opportunity to present valid Form I-9 documents.
- Require employees to provide additional evidence of employment eligibility or more documents than ICE is requiring you to obtain.
- Limit the range of documents that employees are allowed to present for purposes of the Form I-9.
- Treat employees differently at any point during the audit because they look or sound foreign, or based on assumptions about whether they are authorized to work in the U.S.

U.S. Immigration and Customs Enforcement

Office of Special Counsel for Immigration-Related Unfair Employment Practices

Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits

This guidance is intended to help employers structure and implement internal audits in a manner consistent with the employer sanctions and anti-discrimination provisions of the Immigration and Nationality Act (INA), as amended 8 U.S.C. §§ 1324a, 1324b, and does not insulate employers from liability under either provision.

What is the appropriate purpose and scope of an internal audit of Forms I-9?
While not required by law, an employer may conduct an internal audit of Forms I-9 to ensure ongoing compliance with the employer sanctions provision of the INA. An employer may choose to review all Forms I-9 or a sample of Forms I-9 selected based on neutral and non-discriminatory criteria. If a subset of Forms I-9 is audited, the employer should consider carefully how it chooses Forms I-9 to be audited to avoid discriminatory or retaliatory audits, or the perception of discriminatory or retaliatory audits. An employer should note that penalties for violations of the employer sanctions provision and the anti-discrimination provision of the INA may be imposed even if an internal audit has been performed.

What should an employer consider before conducting an internal Form I-9 audit?
Before conducting an audit, an employer should consider the purpose and scope of the audit and how it will communicate information to employees, such as the reasons for the internal audit and what employees can expect from the process. An employer should consider the process it will have for fielding questions or concerns about the audit and how it will inform the employees of that process. The employer should consider how it will document its communications with employees and how it will ensure consistent standards when addressing any Form I-9 deficiencies revealed by the audit.

What can an employer do to avoid conducting internal audits that are discriminatory or retaliatory?
Internal audits should not be conducted on the basis of an employee's citizenship status or national origin, or in retaliation against any employee or employees for any reason. An employer should also consider whether the audit is or could be perceived to be discriminatory or retaliatory based on its timing, scope or selective nature.

What information should an employer communicate to its employees before and during an internal audit?
It is recommended that an employer develop a transparent process for interacting with employees during any internal audit. This includes informing the employees in writing that the employer will conduct an internal audit of Forms I-9, explaining the scope and reason for the internal audit, and stating whether the internal audit is independent of or in response to a government directive. When a deficiency is discovered in an employee's Form I-9, the employer should notify the affected employee, in private, of the specific deficiency. The employer should provide the employee with copies of his or her Form I-9, any accompanying Form I-9 documents, and any other documentation showing the alleged deficiency. If the employee is not proficient in English, the employer should communicate in the appropriate language where possible. An employer should also provide clear instructions for employees with questions or concerns related to the internal audit on how to seek additional information from the employer to resolve their questions or concerns.

What is the procedure for correcting errors or omissions found on a Form I-9?
An employer **may not** correct errors or omissions in Section 1. If an employer discovers an error or omission in Section 1 of an employee's Form I-9, the employer should ask the employee to correct the error. The best way to correct the error is to have the employee:

- Draw a line through the incorrect information;
- Enter the correct or omitted information; and
- Initial and date the correction or omitted information.

Employees needing assistance to correct or enter omitted information in Section 1 can have a preparer and/or translator help with the correction or omitted information. The preparer or translator should:

- Make the correction or note the omitted information or help the employee make the correction or note the omitted information. The employee or preparer or translator should draw a line through the incorrect information and enter the correct information or note the omitted information;
- Have the employee initial and date the correction or omitted information if able; and
- Initial and date the correction or omitted information next to the employee's initials.

If the preparer and/or translator who helped with a correction or noted omitted information completed the preparer and/or translator certification block when the employee initially completed the Form I-9, he or she should not complete the certification block again. If the preparer and/or translator did not previously complete the preparer and/or translator certification block, he or she should:

- Complete the certification block; or
- If the certification block was previously completed by a different preparer and/or translator:
    - Draw a line through the previous preparer and/or translator information; and
    - Enter the new preparer and/or translator information (and indicate "for corrections").

If the employee is no longer working for the employer, the employer should attach to the existing form a signed and dated statement identifying the error or omission and explaining why corrections could not be made (e.g., because the employee no longer works for the employer).

An employer may only correct errors made in Section 2 or Section 3 of the Form I-9. The best way to correct the form is to:

- Draw a line through the incorrect information;
- Enter the correct or omitted information; and
- Initial and date the correction or omitted information.

An employer should not conceal any changes made on the Form I-9—for example, by erasing text or using correction fluid, nor should the employer backdate the Form I-9.

An employer that made multiple errors in Section 2 or 3 of the form may redo the section(s) containing the errors on a new Form I-9, and attach it to the previously completed form. An employer should attach an explanation of the changes made to an existing Form I-9 or the reason a new Form I-9 was completed, and sign and date the explanation.

What should an employer do if an internal audit reveals that the wrong version of the Form I-9 was completed?
As long as the Form I-9 documentation presented was acceptable under the Form I-9 rules that were current at the time of hire, the employer may correct the error by stapling the outdated completed form to a blank current version, and signing the current blank version noting why the current blank version is attached (e.g., wrong edition was used at time of hire). In the alternative, the employer may draft an explanation and attach it to the outdated completed Form I-9 explaining that the wrong form was filled out correctly and in good faith.

How should an employer determine during an internal audit whether documentation presented for Section 2 of the Form I-9 met employment eligibility verification requirements?
Documentation presented for Section 2 of the Form I-9 is sufficient as long as the documentation was acceptable under the requirements of the Form I-9 in effect at the time the Form I-9 was completed. As the Lists of Acceptable Documents have changed over the years, employers should not assume documentation in Section 2 of the Form I-9 is insufficient simply because it does not satisfy current Form I-9 rules or appear on the Lists of Acceptable Documents currently in effect.

What should an employer do when it discovers during an internal audit that (1) a Form I-9 for an employee was not completed or is missing, or (2) an entire section on the Form I-9 was left blank?
If a Form I-9 was never completed or is missing, the current version of the Form I-9 should be completed as soon as possible. If an original Form I-9 exists but either Section 1 or Section 2 was never completed, the employee (for Section 1) or the employer (for Section 2) should complete the section as soon as possible. In both scenarios, the employer should not backdate the form, but should clearly state the actual date employment began in the certification portion of Section 2. The employer should attach a signed and dated explanation of the corrective action taken.

May an employer complete new Forms I-9 for existing employees whose Forms I-9 do not contain sufficient documentation to meet employment eligibility verification requirements?
Yes. When a Form I-9 does not reflect that the employee provided sufficient documentation upon hire or reverification under Form I-9 rules current at the time of hire or reverification, an employer should ask the employee to present documentation sufficient to meet the requirements of the current version of the Form I-9. The employer should staple the completed and signed Section 2 or 3 of the current version of the Form I-9 to the employee's previous Form I-9, together with a signed and dated explanation of the corrective action taken. The employer should not backdate the Form I-9. An employer must give an employee the option to present acceptable documentation of the employee's choice to bring the Form I-9 into compliance with the INA.

What should an employer do if an internal audit uncovers photocopies of Form I-9 documents that do not appear to be genuine or to relate to the individual who presented them?
The standard for reviewing Form I-9 documentation during an internal audit does not change from the standard applied during the initial employment eligibility verification process. An employer is required to accept original Form I-9 documentation that reasonably appears to be genuine and to relate to the individual presenting the documentation. If an employer subsequently concludes that a document does not appear to be genuine or to relate to the person who presented it, the employer should address its concern with the employee and provide the employee with the opportunity to choose a different document to present from the Lists of Acceptable Documents. An employer may not conclude without foundation that a photocopy of an employee's Form I-9 documentation is not genuine or does not relate to the individual. In the context of an internal audit, for an employer that has photocopied Form I-9 documentation, it should recognize that it may not be able to definitively determine the genuineness of Form I-9 documentation based on photocopies of the documentation. An employer should not request documentation from an employee solely because photocopies of documents are unclear. Furthermore, an employer cannot use I-9 audits to discriminate against, retaliate against, and/or intimidate employees and should not terminate employees, unless the employee cannot demonstrate identity and/or work authorization.

May an employer request specific documents when correcting a Form I-9 as a result of an internal audit?
No. While an employer may specify that the particular document called into question by the internal audit may not be used again for Form I-9 purposes, the employer should not request specific documents. The employee should be permitted to present his or her choice of other documents, as long as they are acceptable for employment eligibility verification purposes.

What should an employer participating in E-Verify do if it discovers through an internal audit that it did not create E-Verify cases for all employees hired after the employer enrolled in E-Verify?

Unless an employer is a federal contractor with a federal contract that contains an E-Verify clause, it generally cannot use E-Verify for existing employees. Thus, where the employer was enrolled in E-Verify but did not use the system as a business practice, it should not go back and create cases for any employees hired during the time there was deliberate non-use of E-Verify. However, if an employer learns that it inadvertently failed to create a case in E-Verify, the employer should bring itself into compliance immediately by creating a case for the employee. An employer should consult U.S. Citizenship and Immigration Services (USCIS) for further information at 1-888-464-4218 or by e-mail at E-Verify@dhs.gov.

What should an employer participating in E-Verify do if it discovers during the internal audit that it terminated an employee based on the receipt of a tentative nonconfirmation (TNC)?

E-Verify requires employers to provide employees with an opportunity to contest their TNCs and to allow employees to work--without any delay or adverse action--while they are contesting their TNCs. An employer that discovers that it took adverse action against an employee who contested his or her TNC should consider taking corrective action, such as extending an offer of re-employment to the affected individual, or if corrective action is not possible, documenting why the employer was unable to take corrective action. The failure to provide employees with an opportunity to contest their TNCs and to work while contesting their TNCs violates the E-Verify Memorandum of Understanding and may also constitute discrimination based on citizenship status or national origin in violation of the anti-discrimination provision of the INA, depending on the facts of the case.

May an employer require its existing employees to complete new Forms I-9 instead of conducting an internal audit because many existing Forms I-9 appear to be deficient?

An employer is cautioned against obtaining new Forms I-9 from its existing employees (absent acquisition or merger) without regard to whether a particular Form I-9 is deficient or without reason to believe that systematic deficiencies in the employer's employment eligibility verification process call the integrity of all previously completed Forms I-9 into question. Without sufficient justification, requiring an existing employee to complete a new Form I-9 may raise discrimination concerns. Where new Forms I-9 are completed for existing employees, however, they should be stapled to the original Forms I-9, and not backdated. Finally, the same discrimination, retaliation and intimidation concerns implicated by conducting internal audits also apply to obtaining new Forms I-9 from existing employees.

What should an employer do if, when consulted about the results of the internal audit, an employee admits that he or she is not work-authorized?

The employer sanctions provision of the INA makes it unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien knowing that the alien is, or has become, unauthorized for employment. By regulation, "knowing" includes not only actual knowledge, but also knowledge which may be fairly inferred through a notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about an individual's unlawful employment status.

Must an employer always provide employees with at least 90 days to provide Form I-9 documentation where alternative documentation is requested?

No. The employer sanctions provision of the INA makes it unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien knowing that the alien is, or has become, unauthorized for employment. The employer should provide all employees who claim they are work-authorized with a reasonable amount of time to address any deficiencies associated with their Forms I-9 and should not summarily discharge employees without providing a process for resolving the discrepancy. The 90-day period set forth in U.S. Department of Homeland Security Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 72 Fed. Reg. 45611 (Aug. 15, 2007) was rescinded, so the 90-days is not a legally binding regulatory requirement. An employer should recognize that some documents may take up to or more than 120 days to obtain. The reasonableness of a timeframe should be determined on a case-by-case basis. Factors to consider include, for example, the specific nature of the deficiency and the time

required for alternative Form I-9 documentation to be obtained under the circumstances. In addition, all employees who are asked to present alternative documentation should be given the choice of acceptable documents to present (they do not have to use the same document used previously) and should not be treated differently based on perceived or actual citizenship status or national origin. Some employees may not have the same document(s) in their possession that they originally presented for the Form I-9, either because they have misplaced the document(s), their immigration status has changed, the document has since expired, or for other reasons.

Immigration and Customs Enforcement (ICE) presumes that an employer has acted reasonably if it takes appropriate actions to resolve the apparent employment of unauthorized employees within 10 days of receiving a Notice of Suspect Documents letter. In the context of an internal audit, should an employer also provide employees only 10 days to present acceptable alternative documentation?

No. The 10-day period is an ICE policy that applies solely when ICE has issued a Notice of Suspect Documents letter. In these cases, ICE has already determined the employee at issue does not appear to be presently work-authorized. This time period has no bearing on the amount of time an employer may provide its employees to address discrepancies discovered through an internal audit. It is important to remember that the employer sanctions provision of the INA states that it is unlawful to continue to employ an individual once the employer has actual or constructive knowledge of the employee's unauthorized employment status.

What should an employer do if the employee is unable to present acceptable documents within what the employer has determined to be a reasonable amount of time?

An employer should consider the reasons for an employee's inability to present acceptable documentation and determine whether an extended period of time would be appropriate based on the particular circumstances on a case-by-case basis. An employer should be sure to allow or disallow additional time based on objective non-discriminatory and non-retaliatory criteria and without regard to an individual employee's citizenship status or national origin. The employer should document the basis for its decision and continue to document the efforts of the employee to obtain acceptable Form I-9 documentation.

Is an employer required to terminate employees who, as a result of the employer's internal Form I-9 audit, disclose that they were previously not employment-authorized, even though they are currently employment-authorized?

No. This is not required by law. In cases where an employee has worked without employment authorization or with a false identity or fraudulent employment document(s), and the employee has subsequently presented acceptable documentation(s) and is currently employment-authorized, the employment eligibility verification provisions do not require termination of employment. An employer may continue to employ the employee upon completion of a new Form I-9 noting the authorizing document(s), and should attach the new Form I-9 to the previously completed Form I-9 together with a signed and dated explanation.

Should an employer use a third party auditor when conducting an internal Form I-9 audit?

An employer may delegate a third party to conduct an internal Form I-9 audit. However, an employer that relies on third party auditors is not immune from penalties imposed for violating the employer sanctions provision or the anti-discrimination provision of the INA. An employer remains liable for any violations committed by the third party.

May an employer audit a particular employee's Form I-9 in response to a tip that the employee is not work-authorized?

An employer violates the employer sanctions provision of the INA if it continues to employ an employee with actual or constructive knowledge that the employee is unauthorized to work. While tips concerning an employee's immigration status may lead to the discovery of an unauthorized employee, tips and leads should not always be presumed to be credible. An employer is cautioned against responding to tips that have no indicia of reliability, such as unsubstantiated, retaliatory, or anonymous tips. Heightened scrutiny of a particular employee's Form I-9 or the request for additional documentation from the employee based on unreliable tips may be unlawful, particularly if the tip was made based upon retaliation, the employee's national origin or perceived citizenship status.

Should an employer use the Social Security Number Verification Service (SSNVS) during an internal audit?
No. According to the SSNVS Handbook, "SSA will verify [Social Security numbers] and names solely to ensure that the records of current or former employees are correct for the purpose of completing Internal Revenue Service (IRS) Form W-2 (Wage and Tax Statement)." Handbook, p. 4. Additionally, the SSNVS handbook states that any notification about a mismatch makes no statement about an employee's immigration status. Rather, it simply indicates an error in either the employer's records or SSA's records and should not be used as a basis to take adverse action against an employee. In other words, SSNVS is not intended to be used to verify employment authorization in connection with the Form I-9 process. For further information about the proper use of SSNVS, please see the SSNVS Handbook at www.ssa.gov/employer/ssnvs_handbk.htm.

THE UNITED STATES DEPARTMENT of JUSTICE

ST PRACTICES FOR RECRUITING AND HIRING WORKERS

The Immigration and Nationality Act prohibits citizenship status and national origin discrimination with respect to hiring, termination, and recruiting or referring for a fee. 8 U.S.C. § 1324b(a)(1)(B).

The Immigrant and Employee Rights Section (IER) of the U.S. Department of Justice's Civil Rights Division enforces a part of the Immigration and Nationality Act (INA) that prohibits certain types of employment discrimination based on citizenship status and national origin with respect to hiring, firing, and recruiting or referring for a fee. This part of the INA is found at 8 U.S.C. § 1324b(a)(1).

Best Practices for Employers and Recruiters When Hiring

Treat U.S. citizens, non-U.S. citizen nationals, lawful permanent residents, asylees, and refugees consistently in recruitment or hiring, without regard to their citizenship status, except in the limited situation where a law, regulation, executive order, or government contract requires you to consider candidates with certain citizenship statuses. You can learn more about citizenship status discrimination by contacting IER and at 8 U.S.C. § 1324b(a)(1)(B), (2)(C).

Treat workers consistently in recruitment or hiring, without regard to their actual or perceived national origin. The law that IER enforces prohibits national origin at 8 U.S.C. § 1324b(a)(1)(A). IER investigates national origin claims against employers with four to 14 employees, and all work-authorized individuals are protected under this part of the law. The Equal Employment Opportunity Commission (EEOC) investigates national origin claims against employers with 15 or more employees, and all workers are protected under the law that the EEOC enforces, which is found at 42 U.S.C. § 2000e-2.

Adopt employment policies and practices that refrain from discriminating based on citizenship status or national origin.

Do not assume that only U.S. citizens are authorized to work, because many non-U.S. citizens have employment authorization in the United States. You can learn more about employment authorization for non-U.S. citizens at www.uscis.gov, by contacting IER, and at 8 C.F.R. 274a.12(a).

Avoid creating unnecessary hurdles for work-authorized individuals who may not have received a Social Security number (SSN) yet, including some newly-arrived lawful permanent residents and refugees. For example, unnecessarily requiring an SSN to apply for or start a job could create an unwarranted obstacle. The Social Security Administration (SSA) instructs employers that employees are allowed to work while waiting for their SSN, and the Internal Revenue Service and SSA explain how to report an employee's wages until the employee provides you with the SSN. If you use E-Verify, E-Verify instructs you to delay creating the E-Verify case until the worker has received an SSN and that the worker may work during this time if the worker has completed the Form I-9. More information is available at www.e-verify.gov and at 8 U.S.C. § 1324a note Sect. 403(a)(1)(A). You can also learn more about not requiring an SSN from job applicants and new hires in the EEOC's guidance on national origin discrimination.

Best Practices for Persons or Entities Advertising Employment Positions

Unless legally required, avoid language in job postings that limits eligibility based on citizenship status, such as:

- "Only U.S. Citizens"
- "Citizenship Required"
- "Only U.S. Citizens or Green Card Holders"
- "H-1Bs Only"
- "H-1Bs and OPT Preferred"
- "Must have a U.S. Passport"
- "Must have a green card"

- "Must Present U.S. Birth Certificate"

Such discriminatory limitations violate the law that IER enforces at 8 U.S.C. § 1324b(a)(1) unless there is a legal requirement to limit hiring based on citizenship status. You can find more information about this exception at 8 U.S.C. § 1324b(a)(2)(C). Ensuring that job postings are consistent with a legal requirement to restrict jobs to certain citizenship statuses and do not incorrectly exclude citizenship statuses can help employers avoid violating the law that IER enforces.

Job postings that require specific employment eligibility documentation could also violate the law that IER enforces, at 8 U.S.C. § 1324b(a)(6). Under this law, when verifying an employee's work authorization, employers, recruiters, and referrers for a fee are not allowed to request specific documents, require more or different documents, or reject valid employment eligibility documents because of a person's citizenship status or national origin. You can get more information on how to avoid discrimination in the employment eligibility verification process here.

Avoid language in job postings that limits eligibility based on national origin, such as "Native English Speakers only." Such discrimination based on national origin violates the law that IER enforces at 8 U.S.C. § 1324b(a)(1)(A) if the person or entity discriminating has four to 14 workers.

Best Practices for Persons or Entities Whose Hiring, Recruiting, or Referring for a Fee Involves Publishing Job Ads from Third Parties

Inform third parties that discriminatory postings, such as one that requires U.S. citizenship or lawful permanent residence as a condition of employment where not required to comply with law, regulation, executive order, or government contract, are prohibited.

Inform third parties that job postings that discriminate based on national origin are prohibited.

If you identify discriminatory language in job postings, remove those ads or seek legal advice.

For further information on immigration-related employment discrimination, you can contact IER at 1-800-255-8155 (Employer Hotline) or visit IER's website at www.justice.gov/ier.

The information on this webpage is not intended to be a final agency action, has no legally binding effect, and has no force or effect of law. This webpage may be rescinded or modified at the Department's discretion, in accordance with applicable laws. The Department's guidance documents, including this webpage, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent. For more information, see "Memorandum for All Components: Prohibition of Improper Guidance Documents," from Attorney General Jefferson B. Sessions III, November 16, 2017.

Updated February 15, 2019

THE UNITED STATES DEPARTMENT of JUSTICE

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Treat workers consistently in recruitment or hiring, without regard to their actual or perceived national origin. The law that IER enforces prohibits national origin at 8 U.S.C. § 1324b(a)(1)(A). IER investigates national origin claims against employers with four to 14 employees, and all work-authorized individuals are protected under this part of the law. The Equal Employment Opportunity Commission (EEOC) investigates national origin claims against employers with 15 or more employees, and all workers are protected under the law that the EEOC enforces, which is found at 42 U.S.C. § 2000e-2.

Adopt employment policies and practices that refrain from discriminating based on citizenship status or national origin.

Do not assume that only U.S. citizens are authorized to work, because many non-U.S. citizens have employment authorization in the United States. You can learn more about employment authorization for non-U.S. citizens at www.uscis.gov, by contacting IER, and at 8 C.F.R. 274a.12(a).

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Job postings that require specific employment eligibility documentation could also violate the law that IER enforces, at 8 U.S.C. § 1324b(a)(6). Under this law, when verifying an employee's work authorization, employers, recruiters, and referrers for a fee are not allowed to request specific documents, require more or different documents, or reject valid employment eligibility documents because of a person's citizenship status or national origin. You can get more information on how to avoid discrimination in the employment eligibility verification process here.

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Updated February 15, 2019

U.S. DEPARTMENT OF JUSTICE

IMMIGRANT & EMPLOYEE RIGHTS SECTION

CIVIL RIGHTS DIVISION

EMPLOYMENT DISCRIMINATION JURISDICTION

A COMPARISON BETWEEN THE IMMIGRANT AND EMPLOYEE RIGHTS SECTION (IER) AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

	EEOC	IER
TYPES OF DISCRIMINATION WITHIN THE AGENCY'S JURISDICTION	Race, color, religion, national origin, sex, disability, age (40 and over), genetic information, and retaliation	National origin, citizenship status, unfair documentary practices, and retaliation
NECESSARY EMPLOYER SIZE Number of employees that work at the company overall	For Title VII (race, color, religion, national origin, sex), genetic information (GINA), and disability (ADA) claims: 15+ employees For age (ADEA) claims against States or their political subdivisions and EPA claims: 1+ employees For ADEA claims against private employers: 20+ employees There are rules for how the number of employees is calculated.[1]	For national origin claims: 4-14 employees For citizenship status claims: 4+ employees For unfair documentary practices and retaliation claims: 1+ employees
PROTECTED PERSONS Those who can sue or obtain relief because of discrimination	Applicants, former employees, and current employees, regardless of authorization to work in the United States	Applicants, former employees, and current employees with legal authorization to work in the United States (except that citizenship status discrimination covers only U.S. citizens, U.S. nationals, asylees, refugees, and recent lawful permanent residents)
PROHIBITED ACTS	Discrimination in any aspect of employment, including hiring, firing, pay, recruitment/referral, promotions, discipline, work assignments, and any other term or condition of employment; harassment; and retaliation	Discrimination in hiring, firing, recruitment/referral for a fee, employment eligibility verification; and retaliation
AVAILABLE RELIEF Depending on the claims and circumstances	Back pay, front pay, reinstatement, compensatory damages, punitive damages, injunctive relief, and attorney's fees	Back pay, front pay, reinstatement, civil penalties, injunctive relief, and, in limited circumstances, attorney's fees

[1] More information on counting the number of employees for determining employer coverage under EEOC-enforced laws is available on EEOC's website at http://www.eeoc.gov/employers/count.cfm.

	EEOC	IER
CHARGE-FILING DEADLINE Number of days to file a charge after discrimination occurs	180 days in non-deferral states[2] 300 days in deferral states For EPA claims: 2 years to go to the EEOC or directly to the court (without filing a charge)	180 days in all states
HOW TO FILE A CHARGE WITH THE AGENCY	Call the EEOC's toll-free number, use the EEOC's online portal to initiate the charge process, or file a charge with your state fair employment agency. To submit an online inquiry and schedule an interview, visit the portal at https://publicportal.eeoc.gov. A charge of discrimination can then be completed through this online portal. To submit, a pre-charge inquiry online in Spanish, visit https://go.usa.gov/xmX8C.	Online, mail, email, or fax a completed charge form The charge form is available in several languages at www.justice.gov/crt/filing-charge and can be submitted electronically through the online portal.
AGENCY CONTACT INFORMATION	1-800-669-4000 1-800-669-6820 (TTY) www.eeoc.gov	1-800-255-7688 1-800-237-2515 (TTY) www.justice.gov/ier

IER enforces the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b. The regulations for this law are found at 28 C.F.R. Part 44. For more information on IER and the law it enforces, visit www.justice.gov/ier.

The EEOC enforces several federal laws prohibiting employment discrimination. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, prohibits discrimination based on race, color, religion, sex, or national origin. The Equal Pay Act (EPA), 29 U.S.C. § 206(d), prohibits pay discrimination based on sex. The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, prohibits disability discrimination. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621, prohibits discrimination against individuals 40 or older. The Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. § 2000ff, prohibits discrimination because of genetic information. The regulations for the equal employment opportunity laws enforced by the EEOC are at 29 C.F.R. Chapter XIV, including the regulations discussing EEOC procedures at 29 C.F.R. § 1601 (Title VII, ADA, & GINA procedures), 29 C.F.R. § 1621 (EPA procedures), and 29 C.F.R. § 1626 (ADEA procedures). For more information on the EEOC and the laws it enforces, visit www.eeoc.gov/laws/.

[2] 42 U.S.C. § 2000e-5; 29 C.F.R. § 1061.13. For more information on deferral, visit www.eeoc.gov/employees/timeliness.cfs.

U.S. DEPARTMENT OF JUSTICE

IMMIGRANT & EMPLOYEE RIGHTS SECTION

CIVIL RIGHTS DIVISION

UNLAWFUL EMPLOYMENT DISCRIMINATION BASED ON CITIZENSHIP AND NATIONAL ORIGIN

The U.S. Department of Justice Civil Rights Division's Immigrant and Employee Rights Section (IER) enforces a law that prohibits employers from discriminating against work-authorized individuals based on their citizenship, immigration status, or national origin. This law is known as the anti-discrimination provision of the Immigration and Nationality Act (INA) and can be found at 8 U.S.C. § 1324b and the regulations are at 28 C.F.R. Part 44.

Under this law, the general rule is that employers are not allowed to hire, fire, or refuse to recruit or hire, a worker based on the worker's actual or assumed citizenship, immigration status, or national origin. 8 U.S.C. § 1324b(a)(1). Employers also are not allowed to treat workers differently for these reasons in the Form I-9 and E-Verify processes. 8 U.S.C. § 1324b(a)(6). This law also prohibits retaliation against workers. 8 U.S.C. § 1324b(a)(5).

IER investigates and prosecutes such claims of discrimination. Employers found to have discriminated may have to pay civil penalties and back pay to discrimination victims. 8 U.S.C. § 1324b(g)(2)(B).

Examples of unlawful discrimination in hiring and firing processes (8 U.S.C. § 1324b(a)(1)):

The employer makes hiring decisions based on national origin.

In February 2018, IER settled a charge-based investigation after IER's investigation determined that a restaurant preferred to hire staff of Japanese or Korean national origin and denied employment to a qualified applicant with a different national origin. The employer paid the applicant back pay and, as part of the settlement, agreed to pay civil penalties and undergo IER training.

The employer prefers to hire U.S. citizens without a law, regulation, government contract, or executive order that would require the restriction.

In June 2018, an employer agreed to pay $17,475 in civil penalties after IER's investigation concluded that the employer failed to consider non-U.S. citizen applicants and published job advertisements improperly restricting positions to U.S. citizens only.

The employer hires temporary visa holders but rejects qualified and available U.S. workers who apply for the same jobs due to a hiring preference for visa holders.

In June 2018, an employer agreed to pay up to $85,000 in back pay to U.S. workers after IER determined through its investigation that the employer discriminated against U.S. workers in favor of H-2B temporary visa holders in the hiring process. The employer also agreed to pay $15,600 in civil penalties and engage in enhanced recruiting efforts for U.S. workers.

The employer prefers to hire undocumented workers instead of work-authorized individuals.

In November 2010, an employer agreed to pay $2,000 in back pay after IER's investigation determined that the employer terminated a lawful permanent resident in favor of an undocumented worker employed in the same position.

Examples of unlawful discrimination in the Form I-9 process (8 U.S.C. § 1324b(a)(6)):

The employer demands specific documents from non-U.S. citizen workers because of their citizenship or immigration status.

In October 2015, an employer agreed to pay $455,000 in civil penalties after IER, through its investigation, concluded that the company had a policy of requiring non-U.S. citizens to produce specific types of "List A" immigration documentation, such as a "green card," during the Form I-9 process before letting them begin work, while letting U.S. citizens choose which acceptable documents to present.

The employer asks non-U.S. citizens and foreign-born citizens for more documents than needed to complete the Form I-9 because of their citizenship or immigration status.

In December 2014, an employer agreed to pay over $88,000 in civil penalties and almost $120,000 in back pay to two discrimination victims, after an administrative law judge found that the company required foreign-born job applicants and employees to produce more, different, and specific documents to prove their employment eligibility verification, while native-born U.S. citizens were allowed to produce the documentation of their choice.

The employer rejects valid employment authorization documents from non-U.S. citizens.

In January 2016, IER settled a charge-based investigation after IER's investigation concluded that the company improperly rejected a work-authorized non-U.S. citizen's documents establishing employment authorization, even though it had routinely accepted such documents from U.S. citizens. Under the agreement, the employer paid back pay and civil penalties, and received training from IER.

The employer demands that lawful permanent residents present a new "green card" when the card expires but does not make similar requests of U.S. citizens when their U.S. passports expire.

In October 2017, an employer agreed to pay $200,000 in civil penalties after IER's investigation concluded that the employer, among other things, unnecessarily required lawful permanent residents (LPRs) to prove their work authorization again when their "green cards" expired, even though LPRs' work authorization does not expire.

Examples of unlawful discrimination in the E-Verify process (8 U.S.C. § 1324b(a)(1); 8 U.S.C. § 1324b(a)(6)):

The employer selectively terminates or suspends workers for whom it receives tentative nonconfirmations (TNCs), or otherwise interferes with the TNC resolution process, because of the workers' citizenship or immigration status.

In December 2012, an employer agreed to pay back pay to a naturalized U.S. citizen and a civil penalty after IER's investigation concluded that the employer interfered with the individual's ability to resolve her TNC by withholding E-Verify paperwork from the worker and requesting additional documentation because she was a naturalized U.S. citizen.

The employer uses E-Verify to pre-screen workers selectively because of their citizenship or immigration status.

An employer creates an E-Verify case for a refugee before the employer hires the worker and denies the refugee a job when E-Verify generates a TNC. The employer does not create E-Verify cases for native-born U.S. citizens before hire. Alternatively, the employer pre-screens every applicant through E-Verify but only eliminates from consideration non-U.S. citizens who receive a TNC.

The employer uses E-Verify to confirm the continuing employment authorization of non-U.S. citizen workers not subject to reverification.

In May 2013, an employer reinstated a number of workers the employer had terminated improperly. IER's investigation determined that the employer attempted to reverify these workers' employment authorization based on their citizenship status even though their employment authorization was not subject to reverification.

The employer requires non-U.S. citizen workers to provide additional documentation to demonstrate work eligibility for E-Verify purposes because of their citizenship or immigration status.

In February 2013, an employer agreed to pay $8,400 in civil penalties after IER's investigation concluded that the employer required non-U.S. citizens to produce their "green cards" for E-Verify purposes even though they had already produced other acceptable documentation for the I-9 process.

Examples of unlawful retaliation (8 U.S.C. § 1324b(a)(5)):

The employer retaliates against a worker who asserts rights protected under the INA's anti-discrimination provision.

In October 2017, a staffing company agreed to pay the maximum civil penalty for retaliating against a worker. IER's investigation determined that the company removed the worker from its pool of candidates for job placement after the worker complained about the employer's request for a Permanent Resident Card during the employment eligibility verification process.

The employer retaliates against a worker who files a charge with IER.

In October 2015, an employer agreed to pay $1,750 in civil penalties and $15,000 in back pay to a work-authorized individual after IER's investigation determined that the employer barred the worker from the company premises for filing a charge of discrimination with IER.

Immigrant and Employee Rights Section (IER)

1-800-255-8155

www.justice.gov/ier

Calls can be anonymous and language services are available.

TTY 1-800-237-2515