

I-9 Form Updated – New Version (Rev. 03/08/13) Effective Immediately

An updated version of the Form I-9, Employment Eligibility Verification, has been issued by U.S. Citizenship and Immigration Services (USCIS). The updated Form I-9 was issued on March 8, 2013 and USCIS expects employers to begin using it immediately, although there is a 60 day implementation period for its mandatory usage. Beginning May 7, 2013, all prior versions of Form I-9 can no longer be used for either new hires or the reverification of existing employees. Failure to use the updated Form I-9 after May 7, 2013, can subject an employer to fines and penalties. Employers do not need to complete a new Form I-9 for current employees who already have a properly and fully completed Form I-9 on file, unless the need for reverification exists (e.g., an employee's work authorization is expiring, an employee's original Form I-9 was not completed properly at the time of hire, etc.).

The updated Form I-9 contains formatting changes that lengthen it from one page to two pages. The updated Form I-9 also has additional data fields, including a section for the mandatory listing of an employee's passport information in certain circumstances, as well as sections for the optional listing of an employee's e-mail address and telephone number. The List of Acceptable Documents, which constitutes page three of Form I-9, has been updated to clarify which types of Social Security cards are acceptable for the Form I-9 process, and the general instructions for Form I-9 have also been nicely updated and expanded. The updated Form I-9 can be obtained at the [USCIS website](https://www.uscis.gov). A copy also appears at the end of this e-alert. A detailed analysis of the updated Form I-9's changes is below.

The Immigration Reform and Control Act of 1986 (IRCA or the Act), which was later amended by the Immigration Act of 1990 and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), imposes penalties on employers who knowingly hire or continue to employ persons who are not authorized to work in the United States. IRCA¹ Section 101 generally requires employers to have all employees hired after November 6, 1986 complete Section 1 (Employee Information and Verification) of Form I-9 no later than the first day of employment (i.e., the first day of paid work); to examine original document(s) that establish an employee's identity and work eligibility within three business days of the first day of employment; and to complete Section 2 (Employer Review and Verification) of

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Form I-9 within three business days of the first day of employment. The basic rule for the completion of Section 2 is that the employee need only present either one document from List A (Documents that Establish Both Identity and Employment Authorization), or one document from List B (Documents that Establish Identity) and one document from List C (Documents that Establish Employment Authorization) of the List of Acceptable Documents on page three of Form I-9. Employers must maintain a properly and fully completed Form I-9 on file for all current employees, and for the duration of a required retention period for all separated or departed employees.² The failure to properly and fully complete and maintain a Form I-9 on file may result in significant civil penalties, including fines ranging from \$110 to \$1,100 per Form I-9, or criminal charges in the most egregious cases.

Overall Changes to Form I-9 Format

Overall, the changes to Form I-9 should make its completion by hand easier, as the new two-page format provides more space for entering data. The two-page format also clarifies who must complete each part of Form I-9:

- The employee and his or her translator, if any, must complete page one.
- The employer or its authorized representative must complete page two.

Changes to Section 1

The Section 1 header now clearly specifies that Section 1 must be completed by the employee no later than the first day of employment (i.e., the first day of paid work), and that the employee cannot be required to complete Section 1 before an offer of employment has been made.

Section 1 now contains a data field for the employee to cite "Other Names Used." While Form I-9 itself does not specify what types of other names must be listed, Form I-9's instructions appear to indicate that "Other Names Used" only refers to other legal names, such as a maiden name, and not non legal names, such as nicknames. "Other Names Used" is likely included to help Immigration and Customs Enforcement (ICE) and other auditing agencies cross-reference a name on an employer's payroll against a government roster, such as Social Security records or a state's driver's license registry. The completion of this new data field is mandatory; if an employee has no (or has not had) other legal name(s), they



should enter "N/A."

Section 1 now contains optional data fields for an employee's e-mail address and telephone number. Form I-9's instructions indicate that these data fields are included to provide ICE or other auditing agencies additional contact information if they discover a discrepancy between the employee's Form I-9 data and what the government has on file. If an employee chooses to not fill in either or both of these fields, they should enter "N/A." The often missed and incorrectly completed "Status Declaration" in Section 1 has been moved down and made much larger and more apparent. Hopefully, this formatting change will prevent this very important part of Section 1 from being missed as frequently as it has been in the past.

The "Status Attestation" portion now contains the additional requirement that an employee who holds a non-immigrant work authorizing status (that is, is neither a U.S. citizen, lawful permanent resident or national of the United States) must enter the date on which his/her work authorizing status expires, if applicable. Form I-9 itself and its instructions state that there are certain times when it is appropriate for employees to enter "N/A" in this expiration field, such as when an employee holds refugee or asylee status, as such statuses (while non-immigrant) have no definite expiration date.

An employee holding a non-immigrant status must then enter their Alien Registration Number (otherwise known as an A Number), USCIS Number, or Admission Number. According to Form I-9's instructions, USCIS appears to favor an A Number or USCIS Number over an Admission Number. An A Number is typically issued when an individual has voluntarily begun a major immigration-related action, such as filing for permanent residency, being put in removal proceedings, or applying for asylum. An A Number is typically not issued when an individual has applied for non-immigrant, work-authorizing status, such as H-1B, L-1, O-1 or TN status. In those circumstances, the individual is usually only issued an Admission Number on an I-94, Admission/Departure Record, which leads to arguably the most significant addition to Form I-9.

Form I-9 now requires an employee to enter their passport number, as well as the country of passport issuance, in new data fields in the "Status Attestation" portion if the employee's Admission Number (which they hold at the time of completing the Form I-9) was issued to them by U.S. Customs and Border Protection (CBP) at a port of entry or a secondary inspection office. An example of when CBP issues an Admission Number is when an employee has just physically entered the

United States after living overseas based on a petition filed by the employer on the employee's behalf. If the employee obtained their Admission Number from USCIS while physically in the United States or had entered the United States in the unusual circumstance of not having a foreign passport, then the employee must enter "N/A" in both of these new data fields. These data fields are likely to be confusing for many employers and employees, and as they must be either completed with data or "N/A," they create another area of liability for the unwary.

Changes to Section 2

Section 2's header contains several good clarifications. First, USCIS clarifies that the employer or its authorized representative must complete Section 2 within three business days of the employee's first day of employment. For example, if an employee's first day of employment is on a Monday, then Section 2 must be completed by Thursday of that week (assuming that the employer is regularly open for business on the intervening Tuesday and Wednesday). The header further clarifies that the employer must visually examine the document(s) presented by the employee for completion of Section 2. List A contains much more space for the entry of document information. The data field for the employee's first day of employment has been moved out of the certification paragraph and is now much more visible.

List of Acceptable Documents

The List of Acceptable Documents now clarifies in the List C column the exact text that a Social Security card must not contain for the Social Security card to be a valid List C document. It specifies that a Social Security card may not be used as a List C document if it contains any of the following restrictions: "Not Valid for Employment," "Valid for Work Only with INS Authorization" or "Valid for Work Only with DHS Authorization."

¹ Codified at 8 U.S.C. § 1324a(a)(1) (2010).

² Form I 9s must be retained for one year from the date of an employee's departure or separation from the employer, or three years from the employee's date of hire, whichever is later.

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