

THE IMMIGRATION EDGE

Revised Form I-9 Becomes Effective April 3, 2009

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The Department of Homeland Security has revised the Employment Eligibility Verification Form ("Form I-9"), altering the list of documents employers may accept to verify work authorization and identity. Employers, agricultural recruiters and referrers, for a fee, must use the new version of the I-9 starting April 3, 2009.

Why did Homeland Security revise the I-9?

All employees, regardless of citizenship, must show employers documents to establish identity and eligibility to work in the U.S. Only certain types of documents are acceptable, as listed on the Form I-9. The employer must record information about the documents reviewed on the Form I-9.

Over the last decade or so, changes intended to improve the security of the employment authorization verification process and to ease the burden on employers for document review have occurred, though in piecemeal fashion. In 1996, Congress passed the Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), slating some documents for removal from the list, and for others, requiring greater security. In 1997, the former Immigration and Naturalization Service ("INS") published an interim rule to delist some of those documents from the I-9, but the change was long in coming. It was not until 2007 that the Homeland Security agency, U.S. Citizenship and Immigration Services ("USCIS") issued a revised Form I-9, incorporating the changes INS planned more than a decade earlier.

This brings us to the present. On December 17, 2008, USCIS published an interim final rule intended to streamline and improve the existing employment verification process by removing more documents and adding some, to better reflect employment authorization. Intended for February 2, 2009, the effective date was extended two months, to April 3, 2009.

What are the main changes to the I-9?

The employer and the employee must complete the front side of the Form I-9. It now contains the following revision:

- Addition of a new category for employees to attest whether they are U.S. citizens or U.S. nationals (the prior version of Form I-9 combined those statements).

The reverse side of the Form I-9 lists three types of documents for the employee to present and for the employer to review: "List A" documents, which are acceptable for both identification and employment authorization; "List B" documents, to establish identity, and "List C" documents, to establish employment eligibility. The revised Form I-9 implements the following changes to List A documents:

- Eliminated from List A: Forms I-688, I-688A and I688B (Temporary Resident Cards and out-of-circulation Employment Authorization Document cards), leaving only one type of acceptable Employment Authorization Card, the I-766;
- Added to List A:
 - Passports for citizens of the Federated States of Micronesia ("FSM") and the Republic of the Marshall Islands ("RMI"), and Form I-94 or Form I-94A confirming non-immigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; and
 - Foreign passports with certain machine-readable immigrant visas ("MRIV"). Some consulates issue machine-readable immigrant visas, or MRIVs instead of the temporary I-551 stamps evidencing newly approved lawful permanent resident status.

The most significant change to the Form I-9 is that all documents presented during the verification process must be unexpired, if they have an expiration date. Documents that do not have expiration dates are still acceptable for I-9 purposes. This includes old I-551 Resident Alien Cards that are no longer issued but still valid, including pink-tinted "green cards," or other permanent resident or resident alien cards without expiration dates, as well as Social Security cards, which are used to verify Form I-9 "List C" requirements, as evidence of employment authorization.

Who will be affected by the change?

As of April 3, 2009, employers, agricultural recruiters and referrers, for a fee, will be required to use the revised Form I-9 to verify identity and employment authorization for all new hires, regardless of citizenship, and to re-verify existing employees with expiring employment authorization. The current version of Form I-9 (dated June 5, 2007), will no longer be acceptable or available from USCIS after April 3, 2009.

The revision may have a greater impact on U.S. citizens than on foreign nationals, in particular, the requirement for unexpired documents. Previously, U.S. citizens could present expired passports. With the requirement that all documents must be unexpired, a U.S. citizen starting a new job and intending to present a passport as evidence of employment eligibility should plan ahead, to make sure the passport is unexpired, or to apply to renew the passport well in advance of the job start date.

Human resources departments might want to include a link to the I-9 form and its list of acceptable documents in the offer letters, to remind future employees to gather valid documents in advance of the first day of work.

Where can I find the form?

USCIS has posted the new Form I-9 on its [website](#).

USCIS has also published a revised [Handbook for Employers](#) that reflects the changes to the Form I-9. The new Handbook contains useful guidance and well as instructions and examples for completing the I-9.

Are there any documents not listed on the Form I-9 that are acceptable?

A type of acceptable employment authorization document missing from the I-9 list applies to employees transferring to a new employer in H-1B status. For a foreign national previously accorded H-1B status but changing employers, the I-797 receipt notice evidencing a pending H-1B petition that the employer filed for the employee is acceptable as evidence of employment authorization. The Handbook for Employers provides guidance for this scenario and many others.

How does the revision affect existing employees?

Employers need to complete the revised version of the Form I-9 for new employees but should not be completing Form I-9's for existing employees, except for those who require re verification due to document expiration, in which case the employers must use the new Form I-9.

Please bear in mind that although the new form will require unexpired documents to be acceptable for I-9 purposes, the future expiration of a U.S. passport or an I-551 permanent residence card "green card" does not mean the person no longer has employment authorization and does not trigger the need for re-verification. A U.S. passport or a permanent residence card must be unexpired on the day it is presented, but it may expire in the course of employment, and will not require updating of the I-9 for that reason.

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