

## FORM I-9 AND THE VERIFICATION PROCESS, EXTENSIONS OF STAY AND PORTABILITY – FAQ AND SUPPLEMENT

This FAQ is to supplement to the USCIS **Guide to Employers (M-274)**, <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>. Both USCIS and U.S. Immigration and Customs Enforcement (ICE) administer the interpretation and enforcement of I-9 regulations. Other government resources include I-9 Central (<https://www.uscis.gov/i-9-central>) and the E-Verify page (<https://www.uscis.gov/e-verify>).

### 1. What document is acceptable for reverification in the event of an extension of a visa petition?

Nonimmigrants who are authorized to work for a specific employer incident to status, such as those in E, H, L, O, P and TN status, may continue their employment with the same employer for a period of up to 240 days following expiration of their authorized period of stay (form I-94). They may do so provided an application for an extension of stay with USCIS was timely filed, and the petition has not yet been adjudicated. If reverifying the I-9 on this basis, USCIS guidance is that the employer should write “240 Day Ext” and enter the date the Form I-129 was filed with USCIS in the “Additional field in Section 2”. Alternatively, the employer may make these notations in the margins of Section 2 if updating an older version of Form I-9.

Also, the employee may update Section 1 by crossing out the expiration date of their employment authorization noted in the attestation with a single strike-through line. Then, they can write in the new date that the automatic extension of employment authorization ends alongside their initials and date of update. A copy of the filed petition along with a copy of the express mailing tracking, Receipt Notice or other evidence of extension petition filing should be kept with the I-9 form.

The employer must then re-verify the employee’s employment authorization in Section 3 once an approval is received on the petition extension before the end of the 240-day period.

The employee will have 240 days of work authorization starting on the date that the current I-94 expires. While there will be no interruption in work authorization, individuals may encounter difficulty in renewing driver’s licenses after the expiration of the I-94 and international travel will also need to be delayed until the extension is approved after the I-94 expiration date and/or if a new visa is required. If the petition remains pending more than 240 days beyond the I-94 expiration date, the individual will no longer have work authorization even if s/he can remain in the United States.

### 2. What document is acceptable for reverification in the event of an extension of an EAD?

Certain nonimmigrants who have filed for extension of EADs are permitted to work or continue working based on a timely filed application to renew. Specifically, DHS regulations provide a 180-day automatic extension of certain EADs where a timely renewal has been filed. The eligible categories are listed on the USCIS website, <https://www.uscis.gov/working-united-states/automatic-employment-authorization-document-ead-extension>, and include adjustment application-based EAD extensions. The employer may accept, as a List A document, a combination of an expired EAD noting the qualifying eligibility category, with a Form I-797C, Notice of Action acknowledging receipt of an EAD renewal application and noting that eligibility category that matches the expired EAD, so long as the Receipt indicates that the renewal was filed before the date of the EAD expiration. Note, that individuals under Temporary Protected Status (TPS) have different rules covered in M-274 Handbook.

If reverifying the I-9 on this basis, USCIS guidance is that the employer should write an annotation such as “180 Day EAD Ext” and enter the date the EAD extension was filed in the “Additional field in Section 2”. Alternatively, an employer may make these notations in the margins of Section 2 if updating an older version of Form I-9.

Then, the employee may update Section 1 by crossing out the expiration date of their employment authorization noted in the attestation with a single strike-through line. Then, they can write in the new date that the automatic extension of employment authorization ends (Expiration Date plus 180 days) alongside their initials and date of update. A copy of the expired EAD along with the Receipt Notice or other evidence of extension petition filing should be kept with the I-9 form.

The employer must then re-verify the employee’s employment authorization in Section 3 once a decision is received on the EAD extension, even if prior the end of the 180-day period. If the application remains pending beyond the 180-day mark, the individual no longer has work authorization even if eligible to remain in the United States.

### 3. A new employer has filed an H-1B transfer petition; when does “portability” apply?

Based on the American Competitiveness Act of the 21st Century Act of 2000, and as detailed in USCIS H-1B regulations updated in 2017, employees in H-1B status may change to new employment upon filing of the new employer’s H-1B visa petition, if the petition is not “frivolous,” is filed prior to expiration of the period of authorized stay, and the employee has not worked without authorization. Notably, there is no 240-day limit to this work authorization,

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unlike the situation of extension with the same employer. Rather, the expiration of the portable work authorization is determined by the employee’s pre-existing I-94 admission record.

For change of employer petition filings, the employee can start working for the new employer once the petition is filed with USCIS. In most cases, the start date is set for a date after there is confirmation that the filed petition was received and accepted by USCIS. This confirmation can be in the form of a USCIS premium processing receipt email or a USCIS Form I-797 Receipt Notice. Employers may also rely on proof that their petition was received at the USCIS, however this does not confirm that the case was actually feed into the system.

Depending on the pre-existing status expiration, there could be an impact on and the ability to extend driver’s licenses and the ability to travel internationally, if the existing Form I-94 expires while the new petition is pending.

## 4. How does an employer fill out the I-9 in the case of an H-1B employee for whom we have filed a “portable” H-1B transfer petition? (see the “AC-21” FAQ on our website)

The new or H-1B transfer employer must complete Section 2 of its Form I-9 for the new hire within 3 days of the employment start date. The employer may accept the employee’s current Form I-94/I-94A issued by the previous employer along with their foreign passport which would qualify jointly as a List A document.

After the employee has completed Section 1, UCIS guidance is that the employer should complete Section 2 and write “AC-21 Ext” and enter the date the employer submitted Form I-129 to USCIS in the “Additional field in Section 2”. Alternatively, the employer may make these notations in the margins of Section 2 if updating an older version of Form I-9. A copy of the Receipt or evidence of extension petition filing should be kept with the I-9 form.

The employer must then re-verify the employee’s employment authorization in Section 3 once the H-1B extension petition is approved.

Upon approval of the portable H-1B transfer petition, the employee may update Section 1 and the employer Section 2 by updating work authorization where effected (e.g. expiration dates) by crossing out with a single strike-through line. Then, they can write in the new information alongside their initials and date of update. If the petition is denied, employment authorization immediately ends.

### LIST A: Documents That Establish Both Identity and Employment Authorization

*All documents must be unexpired.*

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| 1. U.S. Passport or U.S. Passport Card   | I-94A bearing the same name as the passport and an endorsement of the alien’s 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 |
| 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)   |  |
| 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)  |  |
| 4. Employment Authorization Document (Card) that contains a photograph (Form I-766) (including expired EADs in conjunction with Forms I-797 based on an EAD automatic extension in certain circumstances; see page 13) | 6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI              |
| 5. For a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form   |  |

After the employee has completed Section 1, the employer should complete Section 2 and write “AC-21 Ext” and enter the date the employer submitted Form I-129 to USCIS in the “Additional field in Section 2”. Alternatively, the employer may make these notations in the margins of Section 2 if updating an older version of Form I-9.

A copy of the Receipt Notice or evidence of extension petition filing should be kept with the I-9 form. See samples below.

## Pre-approval sample, SECTION 1

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

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

<input type="checkbox"/>	1. A citizen of the United States
<input type="checkbox"/>	2. A noncitizen national of the United States (See instructions)
<input type="checkbox"/>	3. A lawful permanent resident (Alien Registration Number/USCIS Number): N/A
<input checked="" type="checkbox"/>	4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): 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 Number.

1. Alien Registration Number/USCIS Number: N/A

OR

2. Form I-94 Admission Number: 01234567890

OR

3. Foreign Passport Number: N/A

Country of Issuance: N/A

QR Code - Section 1  
Do Not Write In This Space

## Pre-approval sample, SECTION 2

**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 employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1	Last Name (Family Name) JANE	First Name (Given Name) JANE	M.I. A	Citizenship/Immigration Status 4
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List A Identity and Employment Authorization	List B Identity	List C Employment Authorization
Document Title Foreign Passport, work-authorized nonimmigrant	Document Title N/A	Document Title N/A
Issuing Authority Canada	Issuing Authority N/A	Issuing Authority N/A
Document Number A1234567890	Document Number N/A	Document Number N/A
Expiration Date (if any)(mm/dd/yyyy) 12/31/2020	Expiration Date (if any)(mm/dd/yyyy) N/A	Expiration Date (if any)(mm/dd/yyyy) N/A

Document Title Receipt: Form I-94/I-94A Issuing Authority U.S. Citizenship and Immigration Services Document Number 01234567890 Expiration Date (if any)(mm/dd/yyyy) 12/31/2020	Additional Information MM/DD/YYYY - AC-21 - I-129 was submitted to USCIS. See evidence of filing.	QR Code - Sections 2 & 3 Do Not Write In This Space
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**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions)

The employer must then re-verify the employee's employment authorization in Section 3 once a decision is received on the petition extension, whichever comes first.

Upon approval of the portable H-1B transfer petition, the employer can reverify the Form I-9. The employee may then update Section 1, and the employer may update Section 2 by updating the expiration of work authorization by crossing out the prior expiration date with a single strike-through line. Then, they can write in the new extended expiration of work authorization alongside their initials and date of update.

### Post-approval sample, SECTION 1

4. An alien authorized to work <sup>?</sup> until (expiration date, if applicable, mm/dd/yyyy): <sup>?</sup> ~~MM/DD/YYYY~~   
 Some aliens may write "N/A" in the expiration date field. (See instructions) [New Expiration Date + Initials + Today's Date]

### Post-approval sample, SECTION 2

Document Title <sup>?</sup> Receipt: Form I-94/I-94A
Issuing Authority <sup>?</sup> U.S. Citizenship and Immigration Servi
Document Number <sup>?</sup> 01234567890
Expiration Date (if any)(mm/dd/yyyy) <sup>?</sup> <del>12/31/2020</del> [New Expiration Date + Initials + Today's Date]

### Post approval-sample, SECTION 3

Employee Name from Section 1:		Last Name (Family Name) <sup>?</sup> DOE	First Name (Given Name) <sup>?</sup> JANE	Middle Initial <sup>?</sup> A
<b>Section 3. Reverification and Rehires</b> (To be completed and signed by employer or authorized representative.)				
A. New Name (if applicable) <sup>?</sup>			B. Date of Rehire (if applicable)	
Last Name (Family Name) <sup>?</sup>	First Name (Given Name) <sup>?</sup>	Middle Initial <sup>?</sup>	Date (mm/dd/yyyy) <sup>?</sup>	
C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.				
Document Title <sup>?</sup> Foreign Passport with Form I-94, endorsement	Document Number <sup>?</sup> 01234567890	Expiration Date (if any) (mm/dd/yyyy) <sup>?</sup> <del>MM/DD/YYYY</del>		
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.				
Signature of Employer or Authorized Representative <sup>?</sup>	Today's Date (mm/dd/yyyy) <sup>?</sup>	Name of Employer or Authorized Representative <sup>?</sup>		

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