

## FORM I-9 AND THE VERIFICATION PROCESS – FAQ

This FAQ is supplement to the guidance Guide to Employers (M-274) provided by the U.S. Citizenship and Immigration Services (USCIS) on its website <http://www.uscis.gov/files/nativedocuments/m-274.pdf> . Both USCIS and U.S. Immigration and Customs Enforcement (ICE) administer the interpretation and enforcement of I-9 regulations.

### Questions about the verification process

#### **A1. When can employers accept an expired work authorization List C document?**

Never, unless the employee is applying for the replacement of a lost, stolen or damaged document. A receipt showing an extension of expiring employment authorization is not acceptable. The “receipt rule” applies only if the individual is already work-authorized and the work authorization has not expired. The individual is then permitted 90 days to present the actual work authorization document, such as a Social Security card or Permanent Resident card.

#### **A2. Are there any exceptions to the “receipt rule”?**

Yes. One exception to this rule applies to certain nonimmigrants who are authorized to work for a specific employer incident to status, e.g., E, H, L, O, P and TN status. Such nonimmigrants may continue their employment for a period of up to 240 days following expiration of their authorized period of stay, provided they filed a timely application for an extension of stay with CIS, and the application has not yet been adjudicated. You should write in List A: “Employment authorized for 240 days pursuant to CFR § 274a.12(b)(20)”, and insert the filing receipt number in parentheses. The other exception is when an H-1B employee transfers to a new employer. See below.

#### **A3. How do I 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 “AC-21” Q&A on Jackson & Hertogs website)**

This situation is another exception to the “receipt rule”. In these cases, the former INS indicated that the employer may accept a currently valid passport with an I-94 showing an unexpired period of H-1B stay (for the previous employer), and the filing receipt for the new H-1B petition (either the email receipt from USCIS with the case number, or a copy of the USCIS receipt sent by mail). You should insert in List A the I-94 number with the expiration date from the previous employer and write in: “AC21 Section 105 Portability.” Then, insert the filing receipt number in parenthesis.

#### **A4. If an alien is on a nonimmigrant visa, e.g., H-1B, and becomes a Permanent Resident, will I have to complete a new I-9 or reverify the existing I-9?**

There is no need to immediately reverify the I-9 in such cases; simply reverify the existing I-9 before the nonimmigrant basis for work authorization expires. Note that all such reverifications must be made on the version of Form I-9 in effect at the time of reverification – do not complete the reverification section (Section 3) on a version of Form I-9 which is no longer valid.

#### **A5. What if the alien’s Adjustment of Status application is approved and s/he gets a temporary I-551 stamp (i.e., green card stamp) valid for 12 months or less. Do I have to reverify the I-9 before the temporary stamp expires?**

Yes, you must reverify Form I-9 before the accepted I-551 stamp expires, either using the actual green card (List A document), or with suitable List B and List C documents (i.e., drivers license and unrestricted social security card). You must allow the employee to choose which documents he or she provides – you cannot require a specific document or combination of documents.

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### **A6. Must I revalidate Form I-9 if the Permanent Resident has a Form I-551 “green card” which is expiring soon? Do I need to record the expiration date of the green card?**

No. Lawful permanent residents maintain their status as permanent residents and their work authorization even if their green cards expire. However, you must record the expiration date of the I-551 document on the I-9 Form as proof that the document was valid at the time Form I-9 was completed.

### **A7. If an applicant for Adjustment of Status holds both a valid Advance Parole travel document and an Employment Authorization Document (I-766), may either document be accepted as proof of employment authorization?**

No. An Advance Parole document only authorizes travel, it does not document employment eligibility. The Employment Authorization Document (I-766) is a List A document on Form I-9, and may be accepted for purposes of verification.

### **A8. If a nonimmigrant employee files for Adjustment of Status (I-485), does the I-485 receipt document employment authorization?**

No.

### **A9. When a nonimmigrant extends his or her temporary status, what document must the employer examine to reverify employment authorization?**

- If the petition extension is approved as an extension of status in the United States, the original I-797 approval notice will include an I-94 card that specifies the period of extension (I-797A). The employer may use the employee’s passport and the new approval notice with attached I-94 to reverify, as a List A document (unexpired foreign passport with I-94 indicating endorsement of alien’s status for the employer)
- If the petition is approved but does not include an extension of status (i.e., “cable” notification), the approval notice (I-797B) will not be valid until the employee returns to the U.S. and is issued an I-94 card that reflects the extension of stay. The employer may then accept the employee’s passport and the new I-94 card as a List A document to reverify employment authorization.

## **Questions About Documents**

### **B1. May I accept electronic copies of documents?**

No. Employers must examine original documents to complete Form I-9. For limited exceptions, such as H-1B portability, an electronic receipt or email is considered an “original” document.

### **B2. What should I do if persons present Social Security Cards marked “VALID FOR EMPLOYMENT ONLY WITH INS (or DHS) AUTHORIZATION” as a List C document?**

You should ask them to provide an additional document(s) to establish their employment eligibility, since such Social Security Cards do not establish work authorization. Note that you cannot specify which documents the employee should provide.

### **B3. If the employee submits a Social Security card that says “NOT VALID FOR EMPLOYMENT” and submits another acceptable document (that shows s/he is work authorized), am I required to follow up?**

No.

### **B4. What do I do if I receive a “mismatch letter” from the Social Security Administration (SSA)?**

The most important thing to do is not panic. An employer receives a no-match (“mismatch”) letter when an employee’s information does not match the SSA’s records. Please note that these letters are not notifications of immigration violations. The SSA has reported that many of

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the no-matches result from typographical mistakes and human error and that it has problems with last names that are changed or hyphenated, such as women's names, shortened names, and compound names.

The no-match letter that employers receive explains that the employer submitted at least one W-2 form in which a name or Social Security Number (SSN) did not match SSA records. The letter provides a list of the names and SSNs of all employees whose records do not match and requests that the employer provide the correct information within 60 days. It also instructs employers that the letter, in and of itself, does not provide a basis for taking adverse action against an employee and is not a statement about the employee's immigration status. It is important that employees be informed that they are able to ask for a copy of the letter and that they can consult with an attorney or advocate group.

### **B5. How does an employer verify a Social Security Number (SSN) of an employee?**

Employers may submit online requests to verify up to 10 names and SSNs, and receive immediate results. For requests to verify as many as 250,000 numbers overnight, you can upload a data file and these will be processed by SSA, generally within one business day. You will need the following information to verify each name/SSN:

- SSN
- last name
- first name
- middle initial (if applicable)
- date of birth –and–
- sex

In order to submit verification requests online, employers must first register. See <http://www.ssa.gov/employer/ssnv.htm> for additional details and registration information.

### **B6. If an individual submits a Social Security card and a green card that appears false, am I obligated to check the Social Security Number with the Social Security Administration?**

No. Although you may verify the validity of the SSN, you are not legally obligated to do so. If the document appears false on initial verification, you are only obligated to ask the individual to present a genuine document within three days. Employers are not expected to be document experts, and if the document appears to be genuine, it may be accepted.

### **B7. Can an alien on a temporary visa obtain a Social Security Number?**

If the alien is lawfully admitted to the U.S. with USCIS permission to work, s/he is eligible for a Social Security Number (SSN). Obtaining an SSN may take some time; however, as the Social Security Administration must have independent verification of work authorization through its database, which must be updated through the USCIS. If the alien is lawfully admitted but does not have USCIS permission to work, SSA can assign him/her a SSN only if he has a valid non-work reason for needing a number. Effective March 1, 2002, the SSA no longer provided SSNs when the sole reason for needing an SSN is to comply with a State statute that requires an SSN for issuance of a driver's license. SSA continues to issue SSNs to aliens who are not otherwise eligible for the following non-work purposes:

1. Federal statute or regulations require the alien provide his/her SSN to get the benefit or service; or
2. State or local laws require the alien to provide his/her SSN to get general assistance benefits to which the alien has established entitlement.

If the alien does not have permission to work but still needs an SSN for one of the reasons mentioned above, s/he must provide a statement on letterhead stationery from the government agency that is requiring him/her to have an SSN, which indicates that s/he meets all the agency's requirements to get the benefit or service except for having an SSN.

### **B8. Is a Social Security card acceptable if a parent signed the card rather than the employee?**

Yes.

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### **B9. If a U.S. birth certificate is issued by a government hospital, is it still necessary to arrange for a birth certificate issued by the State?**

Yes, the birth certificate must be issued by a state, county, municipal authority or outlying possession of the U.S.

### **B10. Is a permit acceptable as a List B identity document, if it includes a picture?**

No. The only permissible List B documents are those listed on the back of the I-9 Form, or those which the INS or USCIS has since indicated are acceptable documents.

## **Questions about completing and retaining the Form I-9**

### **C1. Does the original I-9 need to be kept at the location in which the employee is working, or can a copy be kept at the worksite, with the original I-9 kept at headquarters?**

It is not necessary to retain a copy of the I-9 at the actual place of employment, so long as the originals are kept at headquarters and can be easily furnished to ICE, the Department of Labor, or the Department of Justice's Office of Special Counsel for Unfair Immigration-Related Employment Practices in the event of an inspection.

### **C2. Can our company retain copies of documents used to verify employment and to complete the Form I-9?**

Yes, you can retain copies of documents, provided that this is done for all Forms I-9 and all employees are treated the same. If your company policy is to make and retain copies of verification documents, then you must make and retain copies for all I-9s and all employees. You cannot only retain such copies for certain classes of employees such as nonimmigrant workers or green card holders. If you make a copy, make copies of both sides of all documents, unless it is blank.

### **C3. Can the I-9 be prepared in pencil? Can whiteout be used on the I-9?**

No. All forms should be completed in ink, and any corrections or changes should be made by crossing out the error, and noting the date of the correction.

### **C4. May employers keep electronic copies of Form I-9?**

Yes, provided that any electronic I-9s must be searchable and readily viewable. A suitable electronic I-9 must have:

- Full indexing of all data elements
- Ability to reproduce legible and readable hardcopies (i.e., PDF images)
- "Reasonable controls" required to ensure integrity & accuracy of system
- No restrictions on the government's ability to review and reproduce Forms I-9.

## **Other Questions about Form I-9**

### **D1. If we enroll in E-Verify, must we continue to complete Form I-9?**

Yes. E-verify is a separate system for electronic verification of employment authorization and identity. Employers enrolled in E-Verify must continue to complete and maintain Forms I-9 for employees. For more information about E-Verify, please see our memorandum on E-Verify, <http://www.jackson-hertogs.com/jh/memos/8059.pdf>.

### **D2. If an employee asks what documents should be provided, what should employers advise?**

Employers should not advise an individual on what documents must be provided. If an employee asks for guidance, provide the employee with the Form I-9 and the list of acceptable documents. Employees should be directed to choose documents that appear on the list.