

USCIS Issues New Form I-9, Required of All Employers by May 1, 2020

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On October 21, 2019, U.S. Citizenship and Immigration Services (USCIS) released [a new version of the Form I-9](#). Employers may use the new version starting on January 31, 2020, but will be required to use the new version starting May 1, 2020. Using earlier versions of the form will not be acceptable after that date.

The Form I-9 is a document that employers must complete to verify the identity and employment authorization of every new hire (both citizens and noncitizens), hired after November 6, 1986, to work in the United States. Employers are liable for all errors on the form (even errors made by the employee in completing Section 1), and employers must retain I-9s for inspection for a certain period of time after an employee leaves the company (either one year after the date of termination or three years after the hire date, whichever date is later).

Employers may continue to complete the I-9 entirely on paper or have Sections 1 and 2 completed on a computer, or any combination thereof. Regulations pertaining to completion or retention of electronic I-9s remain in place, and employers working with outside vendors on electronic I-9 completion or storage systems should work quickly to ensure that their systems are compliant with this new form by May 1.

Revisions to Form I-9 Instructions

The Form I-9 was most recently updated in July 17, 2017 (and must have been used by all employers as of September 18, 2017), and so the changes on this version of the form are relatively subtle. The form itself remains unchanged — only the instructions and foreign country lists in List A have been updated. Employers must still take care to use the form with the 10/21/2019 revision date as of May 1, 2020, though.

CHANGES: INSTRUCTIONS

The 10/21/2019 edition of the I-9 involves several updates to the form instructions worth noting. The first is related to a company's authorized representatives who may be designated to complete

Section 2 on behalf of the company. The updated edition provides the following guidance:

You may designate an authorized representative to act on your behalf to complete Section 2. An authorized representative can be any person you designate to complete and sign Form I-9 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 the person designated to act on your behalf.

Although many employers understood this guidance to be true, it is significant that the I-9 instructions make clear that a company may designate any authorized representative to complete Section 2 on the company's behalf. Regardless of who is designated as the company representative, the employer is liable for any violations in Section 2. For employers who hire remote employees, for example, this guidance is helpful. Designated representatives can include anyone, which will help a remote employee who needs to have her original Section 2 documents reviewed and Section 2 duly completed by someone, even if the employee is physically located far away from a company office location.

Another significant clarification in the I-9 instructions concerns the use of "N/A" in the List columns. See the bold addition in the language below:

If you enter document information in the List A column, you should not enter document information **or N/A** in the List B or List C columns.

Interestingly, the fillable I-9 .pdf auto-populates N/A in Lists B and C if a document is entered into List A. The updated instructions, in fact, reference auto-population in List A if information is entered into List B in the fillable version of the I-9 .pdf:

If an employee presents acceptable List B and List C documents, do not ask the employee to present a List A document. If you enter document information in List B, you should not enter document information or N/A in List A. If you complete Section 2 using a computer, a selection in List B will fill all the fields in the List A column with N/A.

Nevertheless, it is useful to employers and designated representatives to have confirmation that "N/A" does not need to be entered into the inapplicable List columns, which should save time in completing Section 2.

Additional updates to the I-9 instructions relate to certain documents being inapplicable in certain lists, despite those documents being named on the Lists of Acceptable documents. For example, in the drop-down lists of documents for List B in the fillable .pdf version of the I-9, "driver's license or ID card issued by a State or outlying possession of the United States as described in B1 of the List of Acceptable Documents" is no longer available. Similarly, for List C's drop-down menu on the fillable .pdf version, "Employment Authorization Document (Form I-766) from List A" is no longer available.

Finally, the newest version of the I-9 instructions carries an interesting addition related to the proper use and disclosure of the I-9. The new instructions indicate, under the "Routine Uses" section, that "DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security." This was not previously spelled out in the I-9 instructions.

Note that USCIS has not issued a revised M-274 Handbook for Employers in tandem with the new version of the I-9. Please view the [current version of the electronic M-274 here](#).

Next Steps for Employers

Although the changes to the Form I-9 and related documents are [not as sweeping as we saw in November 2016](#), employers need to be sure to begin using the new form with the October 21, 2019, revision date as of May 1, 2020, and to ensure that HR teams and others responsible for completing Section 2 of Form I-9 are aware of those small changes to ensure no inadvertent discrimination or noncompliance in completing I-9s for employees.

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