

Form I-9 Changes and Proposed H-1B Changes for Employers

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Revised Form I-9 Now in Effect:

Beginning November 1st, 2023, employers completing the employment eligibility verification process must now utilize the revised Form I-9, dated 08/01/2023. All prior versions of Form I-9 will no longer be accepted, and use of a prior Form I-9 may subject employers to penalties. The revised form includes the following updates:

- Shorter in length, combining Sections 1 and 2 to one page.
- May be completed remotely, using tablets or mobile devices.
- Separates Preparer/Translator Certification into standalone “Supplement A”.
- Revises list of acceptable documents.
- Includes new checkbox for employers examining documents remotely.

H-1B Program Modernization and Fraud Reduction

U.S. Citizenship and Immigration Services (USCIS) published a Notice of Proposed Rulemaking (“proposed rule”) which would modernize the H-1B specialty occupation worker program, while also reducing misuse and fraud. Specifically, the proposed rule would allow an individual who has a registration submitted on their behalf only one entry into the selection process, even if multiple registrations are submitted on their behalf. Overall, this proposed rule would:

Streamline eligibility requirements:

Revise the criteria and definition for “specialty occupation” positions for H-1B purposes, to reduce confusion and to clarify that a position may allow for a range of academic degrees (so long as these

are related to the role).

Improve program efficiency:

Codifies that adjudicators generally should defer to a prior determination if the same candidate/employment was previously approved by the agency (so long as no material facts have changed at the time of a new filing).

Provide greater benefits and flexibilities for employers and workers:

- Expand exemption eligibility for employers subject to the annual H-1B statutory limit, creating more flexibility for certain non-profit entities or governmental research organizations, as well as beneficiaries not directly employed by a qualifying organization. This change would allow more organizations to sponsor H-1B employment without the requirement that they compete in the annual cap lottery.
- Extend flexibilities for students seeking to change their status to H-1B from an F-1 visa, such as extending the duration of F-1 status, and any employment authorization.
- The proposed regulation would also establish new H-1B eligibility requirements for emerging entrepreneurs.

Strengthen integrity measures:

- Prohibit related entities from submitting multiple registrations for the same beneficiary, codify USCIS's authority to conduct site visits, and clarify that refusal to comply with site visits may result in denial/revocation of the underlying petition.
- Additionally, when a registration contains invalid information, the proposed rule would codify USCIS's ability to deny an H-1B petition or revoke an approved H-1B petition.

The 60-day public comment period for the proposed rule will be accepted through December 22nd, 2023. It is expected that the resulting regulations will be implemented in the coming months.

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