I-9 Compliance Guide

2nd Edition — *Fully Updated & Expanded*

FORM I-9

An in-depth analysis of the U.S. Citizenship and Immigration Services' Form I-9 regulations. This plain language guidebook takes a close look at employer's compliance obligations and answers frequently asked questions about the law as it relates to the Form I-9.

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EMPLOYER KNOWLEDGE SERIES

I-9 Compliance Guide

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Introduction

About this Guidebook / Disclaimer

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Implementation Procedures

The following implementation procedures are intended to provide specific instructions for correctly utilizing the various components of our I-9 Compliance Kit. If you have additional questions about this guidebook or other kit components, please contact Personnel Concepts at 800-333-3795.

1. Post the enclosed I-9 Compliance Poster in an area where job applicants and new hires can view it.

2. If you participate in e-Verify, a free electronic verification service sponsored by the Social Security Administration and the Department of Homeland Security, contact us at 800-333-3795 to order a bilingual e-Verify Compliance Poster to meet posting and notification requirements.

3. Read the "Recent Revision to Form I-9" section in this chapter to familiarize yourself with the changes that have been made to the form and how those changes impact the employment eligibility verification process. (Note: While the newly revised form (Rev. 02/02/09)N must be used for all new hires after the final transition date of 4/3/09, you do not need to complete new I-9s for existing employees).

4. Review Chapter 2, "Understanding I-9s," for a plain language overview of the mandatory employment eligibility verification process prescribed by government regulations.

5. Refer to Chapter 3 for information on how I-9 requirements are enforced by various government agencies. This information is intended to help you understand what may happen if you are audited and the enforcing agency discovers a paperwork violation.

6. Read Chapter 4, "Record Keeping and Best Practices" for recommendations on retaining and storing completed I-9 forms.

7. Store all completed I-9 forms, including existing forms on file, in the alphabetized storage binder you received with this guidebook. (The practice of separating I-9 records from other personnel records is recommended by attorneys and HR experts).

8. As needed, refer to Chapter 5 ("Regulatory Text") and Chapter 6 ("M-274 Handbook for Employers") for guidance on properly completing the I-9 or whenever you have questions about the eligibility verification process.

9. Review Chapter 7 ("No-Match Regulations") for information on controversial final regulations regarding employer obligations upon receiving a no-match letter from the Social Security Administration and the Department of Homeland Security.

10. If you need additional I-9 forms, contact Personnel Concepts at 800-333-3795 to order packs of 10 or 25.

Introduction to I-9s

Hiring an employee is very important to the success of a company, but ensuring that it is done without violating hiring laws is equally important. Today, employers must consider both anti-discrimination and immigration laws when they make hiring decisions and set corporate policies relating to hiring.

Over the years, Congress has worked hard to reform our nation's immigration laws so that illegal immigration is eliminated while legal immigration is maintained as one of this country's traditions.

Employment is often what attracts immigrants to the U.S. illegally. Therefore, laws such as the Immigration Reform and Control Act of 1986 (IRCA) and Title 8 of the Code of Federal Regulations have been enacted to ensure that employers hire only those who may legally work here. In order to comply with the laws, employers must verify the identity and employment eligibility of their workers by completing and retaining a Form I-9.

Since 1986, IRCA has imposed several important requirements on employers:

- Employers must not knowingly hire, recruit or refer unauthorized aliens for employment.
- Employers must not continue to employ an alien upon learning that they are or have become unauthorized to work in the U.S.
- Employers must examine documents to verify an applicants' authorization status.
- Employers must verify under penalty of perjury that the employee has work authorization.
- Employers must retain eligibility records for three years after the date of hire, or one year after termination, whichever is later.
- Employers must not discriminate against individuals (except unauthorized aliens) when hiring based on immigration status.

Revisions to Form I-9

U.S. Citizenship and Immigration Services (USCIS) submitted to the Federal Register an interim final rule that revised the list of documents acceptable for the Form I-9, Employment Eligibility Verification, process. The revised form improves the security of the employment authorization verification process. Employers will be required to use the revised form for all new hires and to reverify any employee with expiring employment authorization beginning on April 3, 2009. The current edition of Form I-9, dated 06/05/2007, will no longer be valid for use on or after April 3, 2009. . The Handbook for Employers, Instructions for Completing the Form I-9 (M-274) is being updated to reflect these changes and will be published on the USCIS website in the near future.

The purpose of this rule is to improve the integrity of the employment verification process so that individuals who are unauthorized to work are prevented from obtaining employment in the United States.

The interim final rule narrows the list of acceptable identity documents and further specifies that expired documents are not considered acceptable forms of identification. An expansive document list makes it more difficult for employers to verify valid and acceptable forms and single out false documents compromising the effectiveness and security of the Form I-9 process. The changes included in the interim final rule will significantly improve the security of the employment eligibility verification process.

The revised Form I-9 reflects changes made to the list of documents acceptable for the Form I-9 in accordance with the Department of Homeland Security's (DHS) recent interim final rule. The rule furthers DHS's ongoing effort to increase the security of the employment authorization verification process. The new rule:

- Requires that all documents presented during the verification process be unexpired. **Expired documents may not portray a current status and are prone to tampering and fraud. If a document does not contain an expiration date (such as a Social Security card) then it is considered unexpired.**

- Eliminates List A identity and employment authorization documentation Forms I-688, I-688A, and I-688B (Temporary Resident Card and outdated Employment Authorization Cards). **These documents are no longer issued and have now expired.**

- Adds foreign passports containing certain machine-readable immigrant visas to List A;

- Adds to List A as evidence of identity and employment authorization valid passports for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), along 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 ; and

- Makes technical updates such as replacing the term " employment eligibility" with "employment authorization" to conform the regulations to the statute, replacing references to the former INS with "DHS" and correcting references to Certificates of Birth Abroad in List C to its correct title of "Certification of Report of Birth.".

The revised form should be completed exactly the same way as the old one was. Employers should be mindful of changes to the types of documents that they may accept in Section 2 – Employer Review and Verification. Every employee must have an I-9 completed and in their file unless: 1) They were hired after November 6, 1986 and have continuously worked for the same employer. 2) They are providing domestic services for a private household sporadically, intermittently or irregularly. 3) They are working for an employer as an independent contractor. Or 4) they are providing services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (For example, a temporary employment agency.)

This rule is effective April 3, 2009. Employers only need to complete the revised version of the Form I-9 (Rev. 02/02/09)N for new employees. Employers should not be completing Forms I-9 for existing employees. However, employers must use the Form I-9 when their employees require reverification. The current version of the Form I-9 (dated 06/05/2007) will no longer be valid. Employers who continue to use the 06/05/2007 edition of the Form I-9 on or after that date may be subject to civil money penalties.

Frequently Asked Questions

Q. Do citizens and nationals of the United States need to prove they are eligible to work?
A. Yes. While citizens and nationals of the United States are automatically eligible for employment, they too must present the required documents and complete an I-9. Citizens of the United States include persons born in Puerto Rico, Guam, the Virgin Islands and the Northern Mariana Islands. Nationals of the United States include persons born in American Samoa, including Swains Island.

Q. Do I need to complete an I-9 for everyone who applies for a job with my company?
A. No. You need to complete I-9s only for people you actually hire. For purposes of this law, a person is "hired" when he or she begins to work for you.

Q. Do I need to fill out an I-9 for independent contractors or their employees?
A. No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete I-9s for that company's employees. The construction company is responsible for completing the I-9s for its own employees. However, you must not knowingly use contract labor to circumvent the law against hiring unauthorized aliens.

Q. What should I do if the person I hire is unable to provide the required documents within 3 business days of the date employment begins?
A. If an employee is unable to present the required document or documents within 3 business days of the date employment begins, the employee must produce a receipt showing that he or she has applied for the document. In addition, the employee must present the actual document to you within 90 days of the hire. The employee **must** have indicated on or before the time employment began, by having checked an appropriate box in Section 1 that he or she is already eligible to be employed in the United States.

NOTE: *Employees hired for less than 3 business days must produce the actual document(s) and the I-9 must be fully completed at the time employment begins.*

Can I fire an employee who fails to produce the required documents within 3 business days?
A. Yes. You can terminate an employee who fails to produce the required document or documents, or a receipt for a document, within 3 business days of the date employment begins. **However, you must apply these practices uniformly to all employees.** If an employee has presented a receipt for a document, he or she must produce the actual document within 90 days of the date employment begins.

Q. What happens if I properly complete a Form I-9 and INS discovers that my employee is not actually authorized to work?
A. You cannot be charged with a verification violation. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien, unless the government can show you had actual knowledge of the unauthorized status of the employee, if you have done the following:

- Ensured that employees fully and properly completed Section 1 of the I-9 at the time employment began.

- Reviewed the required documents which should have reasonably appeared to have been genuine and to have related to the person presenting them.
- Fully and properly completed Section 2 of the I-9, and signed and dated the employer certification.
- Retained the I-9 for the required period of time.
- Made the I-9 available upon request to an INS, DOL or OSC officer.

Q. May I specify which documents I will accept for verification?
A. No. The employee can choose which document(s) he or she wants to present from the lists of acceptable documents. You **must** accept any document (from List A) or combination of documents (one from List B and one from List C) listed on the I-9 and found in Part 8 of this Handbook which reasonably appear on their face to be genuine and to relate to the person presenting them. To do otherwise could be an unfair immigration-related employment practice. Individuals who look and/or sound foreign must not be treated differently in the hiring or verification process.

Q. What is my responsibility concerning the authenticity of document(s) presented to me?
A. You must examine the document(s) and, if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

Q. Why are certain documents listed in both List B and List C? If these documents are evidence of both identity and employment eligibility, why aren't they found in List A?
A. Three documents can be found in both List B and List C, the U.S. Citizen ID Card and the ID Card for use of Resident Citizen in the U.S. acceptable as ID Cards in List B and a Native American tribal document. Although these documents are evidence of both identity and employment eligibility, they are not found in List A because List A documents are limited to those designated by Congress in the law. An employee can establish both identity and employment eligibility by presenting one of these documents. You should record the document title, issuing authority, number and expiration date (if any) for that document in the appropriate spaces for **both** List B and List C.

Q. May I accept an expired document?
A. No. Expired documents are no longer acceptable for Form I-9. However, you may accept Employment Authorization Documents (I-766) and Permanent Resident Cards (Form I-551) that appear to be expired on their face, but have been extended under the limited circumstances

Q. How can I tell if an INS-issued document has expired?
A. Some INS-issued documents, such as previous versions of the Alien Registration Receipt Card (I-151 and I-551), do not have expiration dates and are valid indefinitely. However, the 1989 revised version of the Alien Registration Receipt Card (I-551), which is rose-colored with computer readable data on the back, features a 2-year or 10-year expiration date. Other INS issued documents, such as the Temporary Resident Card (I-

688) and the Employment Authorization Card (I-688A or I-688B) also have expiration dates. These dates can be found either on the face of the document or on a sticker attached to the back of the document.

Q. Some people are presenting me with Social Security Cards that have been laminated. May I accept such cards as evidence of employment eligibility?
A. You may not accept a laminated Social Security Card as evidence of employment eligibility if the card states on the back "not valid if laminated." Lamination of such cards renders them invalid. Metal or plastic reproductions of Social Security Cards are not acceptable.

Q. Some people are presenting me with printouts from the Social Security Administration with their name, Social Security Number, date of birth and their parents' names. May I accept such printouts in place of a Social Security Card as evidence of employment eligibility?
A. No. Only a person's official Social Security Card is acceptable.

Q. May I accept a photocopy of a document presented by an employee?
A. No. Employees must present original documents. The only exception is that an employee may present a certified copy of a birth certificate.

Q. I noticed on the Form I-9 that under List A there are 2 spaces for document numbers and expiration dates. Does this mean I have to see 2 List A documents?
A. No. One of the documents found in List A is an unexpired foreign passport with an attached INS Form I-94. The Form I-9 provides space for you to record the document number and expiration date for both the passport and the INS Form I-94.

Q. When I review an employee's identity and employment eligibility documents, should I make copies of them?
A. The law does not require you to photocopy documents. However, if you wish to make photocopies, you should do so for all employees, and you should retain each photocopy with the I-9. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of the I-9 nor is it an acceptable substitute for proper completion of the I-9 in general.

NOTE 1: *Although a Certificate of Naturalization (INS Forms N-550 and N-570) provides across the face of the document that it may not be copied, such certificates may be copied in this limited situation.*
NOTE 2: *Copies of documents retained by Federal government employers must be kept separately from an employee's official personnel folder.*

Q. **When do I fill out the I-9 if I hire someone for less than 3 business days?**
A*.* You must complete **both** Sections 1 and 2 of the I-9 at the time of the hire. This means the I-9 must be fully completed when the person starts to work.

Q. What should I do if I rehire a person who previously filled out an I-9?
A. You do not need to complete a new I-9 if you rehire the person within 3 years of the date that the I-9 was originally completed and the employee is still eligible to work. You should review the previously completed I-9, and if the employee's work authorization has not expired, note the date of rehire in the Updating and Reverification Section on the I-9

(Section 3), and sign in the appropriate space. If the employee's work authorization has expired, you also need to examine a document that reflects that the employee is authorized to work in the U.S., and record the document title, number and expiration date (if any) in Section 3.

Q. What should I do if I need to update or reverify an I-9 for an employee who filled out an earlier version of the form?
A. You may line through any outdated information and initial and date any updated information. You may also choose, instead, to complete a new I-9.

Q. Do I need to complete a new I-9 when one of my employees is promoted within my company or transfers to another company office at a different location?
A. No. You do not need to complete a new I-9 for such promoted or transferred employees.

Q. What do I do when an employee's work authorization expires?
A. You will need to reverify on the I-9 in order to continue to employ the person. Reverification must occur no later than the date that work authorization expires. The employee must present a document that shows either an extension of the employee's initial employment authorization or new work authorization. You must review this document and, if it reasonably appears on its face to be genuine and to relate to the person presenting it, record the document title, number and expiration date (if any), in the Updating and Reverification Section on the I-9 (Section 3), and sign in the appropriate space. You may want to establish a calendar call-up system for employees whose employment authorization will expire in the future.

NOTE: *You cannot refuse to accept a document because it has a future expiration date. You* ***must*** *accept any document (from List A or List C) listed on the I-9 and in Part 8 of this Handbook which on its face reasonably appears to be genuine and to relate to the person presenting it. To do otherwise could be an unfair immigration-related employment practice.*

Q. Can I avoid reverifying the I-9s by not hiring persons whose employment authorization has an expiration date?
A. You **cannot** refuse to hire persons solely because their employment authorization is temporary. The existence of a future expiration date does not preclude continuous employment authorization for an employee and does not mean that subsequent employment authorization will not be granted. In addition, consideration of a future employment authorization expiration date in determining whether an alien is qualified for a particular job could be an unfair immigration-related employment practice.

Q. As an employer, do I have to fill out all the I-9s myself?
A. No. You may designate someone to fill out the I-9s for you, such as a personnel officer, foreman, agent or anyone else acting in your interest. However, you are still liable for any violations of the employer sanctions laws.

Q. Can I contract with someone to complete the I-9s for my business?
A. Yes. You can contract with another person or business to verify employees' identity and work eligibility and to complete the I-9s for you. However, you are still responsible for the contractor's actions and are liable for any violations of the employer sanctions laws.

Q. As an employer, can I negotiate my responsibility to complete the I-9s in a collective bargaining agreement with a union?
A. Yes. However, you are still liable for any violations of the employer sanctions laws. If the agreement is for a multi-employer bargaining unit, certain rules apply. The association must track the employee's hire and termination dates each time the employee is hired or terminated by an employer in the multi-employer association.

Q. What are the requirements for retaining the I-9?
A. If you are an employer, you must retain the I-9 for 3 years after the date employment begins or 1 year after the date the person's employment is terminated, **whichever is later.** If you are an agricultural association, agricultural employer or farm labor contractor, you must retain the I-9 for 3 years after the date employment begins for persons you recruit or refer for a tee.

Q. Will I get any advance notice if an INS, DOL or OSC officer wishes to inspect my I-9s?
A. Yes. The officer will give you at least 3 days (72 hours) advance notice before the inspection. If it is more convenient for you, you may waive the 3-day notice. You may also request an extension of time in which to produce the I-9s. The INS, DOL or OSC officer will not need to show you a subpoena or a warrant at the time of the inspection.

NOTE: *This does not preclude the INS, the DOL, or the OSC from obtaining warrants based on probable cause for entry onto the premises of suspected violators without advance notice. Failure to provide the I-9s for inspection is a violation of the employer sanctions laws and could result in the imposition of civil money penalties.*

Q. Do I have to complete an I-9 for Canadians who entered the United States under the Free Trade Agreement?
A. Yes. You must complete an I-9 for all employees. Canadians must show identity and employment eligibility documents just like all other employees.

Q. If I acquire a business, can I rely on the I-9s completed by the previous owner/employer?
A. Yes. However, you also accept full responsibility and liability for all I-9s completed by the previous employer relating to individuals who are continuing in their employment.

Q. If I am a recruiter or referrer for a fee, do I have to fill out I-9s on persons whom I recruit or refer?
A. No, with three exceptions. Agricultural associations, agricultural employers and farm labor contractors are still required to complete I-9s on all individuals who are recruited or referred for a fee. However, **all** recruiters and referrers for a fee must still complete I-9s for **their own employees** hired after November 6, 1986. Also, **all** recruiters and referrers for a fee are still liable for knowingly recruiting or referring for a fee aliens not authorized to work in the United States.

Q. Can I complete Section 1 of the I-9 for an employee?
A. Yes. You may help an employee who needs assistance in completing Section 1 of the I-9. However, you must also complete the "Prepare/Translator Certification" block. The employee must still sign the certification block in Section 1.

Q. How can I avoid discriminating against certain employees while still complying with this law?
A. You can avoid discriminating against certain employees and still comply with the law by applying the employment eligibility verification procedures of this law to all newly hired employees and by hiring without respect to the national origin or citizenship status of those persons authorized to work in the United States. To request to see identity and employment eligibility documents only from persons of a particular origin, or from persons who appear or sound foreign, is a violation of the employer sanctions laws and may also be a violation of Title VII of the Civil Rights Act of 1964. You should not discharge present employees, refuse to hire new employees or otherwise discriminate on the basis of foreign appearance, accent, language or name.

Q. I know that the Act prohibits discrimination on the basis of citizenship status against "protected individuals." Who are protected individuals?
A. Protected individuals include citizens or nationals of the United States, lawful permanent residents, temporary residents and persons granted refugee or asylee status. The term does not include aliens in one of those classes who fail to make a timely application for naturalization after they become eligible.

Q. **Can I be charged with discrimination if I contact the INS about a document presented to me that does not reasonably appear to be genuine and relate to the person presenting it?**
A. No. The anti-discrimination provisions of the Act only apply to the hiring and discharging of individuals. While you are not legally required to inform the INS of such situations, you may do so if you choose to.

Q. Is the Form I-9 available in languages other than English?
A. The Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may have employees complete the Spanish version for their records. Employers in the 50 states and other U.S. territories may use the Spanish version as a translation guide for Spanish-speaking employees, but must complete the English version and keep it in the employer's records. Employees may also use or ask for a translator/preparer to assist them in completing the form. Employers in Puerto Rico may use either the Spanish or the English version of the new Form I-9 to verify employees. Employers in Puerto Rico may not use the expired 1988 Spanish or English edition of Form I-9.

Understanding I-9s

When a Form I-9 Needs to be Completed

Any time a person is hired to perform labor or services in return for wages or other remuneration, a Form I-9 must be completed. This requirement applies to everyone hired after November 6, 1986.

The employee must fully complete Section 1 of the form at the time of hire or when the employee begins work.

The employer should then review the employee's document(s) and fully complete Section 2 of the form within 3 business days of hire.

If a person is hired for less than 3 business days, Sections 1 and 2 of the Form I-9 must be fully completed at the time of hire or when the employee begins work.

A Form I-9 **DOES NOT** need to completed for:

- Persons hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times.
- Persons employed for casual domestic work in a private home on a sporadic, irregular or intermittent basis.
- Persons who are independent contractors.
- Person who provide labor who are employed by a contractor providing contract services (e.g., employee leasing)

Note: *An employer cannot contract for the labor of an alien if they know the alien is not authorized to work in the United States.*

What to do With Forms I-9 After They Are Completed

Unlike tax forms, for example, I-9 forms are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in its own files for 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later. For example, if an employee was hired on 2/1/02 and their employment was terminated on 6/20/03 the retention date would be figured by the following:

1. Add three years to the date of hire – 2/1/02 + 3 yrs = 2/1/05
2. Add one year to the date employment was terminated – 6/20/03 + 1 year = 6/20/04.
3. Compare the two dates: 2/1/05 and 6/20/04
4. The later of the two, 2/1/05, becomes the retention date.

This means that Form I-9 needs to be retained for all current employees, as well as terminated employees whose records remain within the retention period. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the

documents to be transmitted to the worksite within 3 days of an official request for production of the documents for inspection.

Note: *U.S. immigration law does not prescribe or proscribe storage of a private employer's I-9 records in employee personnel files. As a practical matter, however, particularly if a large number of employees are involved, it may be difficult to extract records from individual personnel files in time to meet a 3-day deadline for production of I-9 records for official inspection.*

Employee's Responsibility

A new employee must complete Section 1 of a Form I-9 no later than close of business on his/her first day of work. The employee's signature holds him/her responsible for the accuracy of the information provided. The employer is responsible for ensuring that the employee completes Section 1 in full. No documentation from the employee is required to substantiate Section 1 information provided by the employee.

Employer's Responsibility

The employer is responsible for ensuring completion of the entire form. No later than close of business on the employee's third day of employment services, the employer must complete section 2 of the Form I-9. The employer must review documentation presented by the employee and record document information of the form. Proper documentation establishes both that the employee is authorized to work in the U.S. and that the employee who presents the employment authorization document is the person to whom it was issued. The employer should supply to the employee the official list of acceptable documents for establishing identity and work eligibility. The employer may accept any List A document, establishing both identity and work eligibility, or combination of a List B document (establishing identity) and List C document (establishing work eligibility), that the employee chooses from the list to present (the documentation presented is not required to substantiate information provided in Section 1). The employer must examine the document(s) and accept them if they reasonably appear to be genuine and to relate to the employee who presents them. Requesting more or different documentation than the minimum necessary to meet this requirement may constitute an unfair immigration-related employment practice. If the documentation presented by an employee does not reasonably appear to be genuine or relate to the employee who presents them, employers must refuse acceptance and ask for other documentation from the list of acceptable documents that meets the requirements. An employer should not continue to employ an employee who cannot present documentation that meets the requirements.

Genuineness of Documents

Employers are not required to be document experts. In reviewing the genuineness of the documents presented by employees, employers are held to a reasonableness standard. Since no employer which is not participating in one of the employment verification pilots has access to receive confirmation of information contained in a document presented by an employee to demonstrate employment eligibility, it may happen that an employer will accept a document that is not in fact genuine, or is genuine but does not belong to the person who presented it. Such an employer will not be held responsible if the document reasonably appeared to be genuine or to

relate to the person presenting it. An employer who receives a document that appears not to be genuine may request assistance from the nearest Immigration field office or contact the Office of Business Liaison.

Receipt Rule

Originally effective September 30, 1997, amended by interim rule on *February 9, 1999,* the receipt rule explains when receipts may be used in lieu of original documents in the Form I-9 process. Under the receipt rule, an individual may present a "receipt" in lieu of a listed document to complete section 2 of the I-9 Form. The receipt is valid for a temporary period. There are three different documents that qualify as receipts under the rule.

The first type of receipt that an employee may present is a receipt for the application for a replacement document when the document has been lost, stolen or damaged. The receipt is valid for 90 days, after which the individual must present the replacement document to complete the I-9 Form. Note that this rule does not apply to individuals who present receipts for new documents following the expiration of their previously held document.

The second type of receipt that an employee may present is a Form I-94 containing a temporary I-551 stamp and a photograph of the individual, which is considered a receipt for Form I-551. The individual must present the Form I-551 by the expiration date of the temporary I-551 stamp, or within one year from the date of issuance of the Form I-94 if the I-551 stamp does not contain an expiration date.

The third type of receipt that an employee may present is a Form I-94 containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (i.e., Form I-766 or I-688B) or a combination of a Social Security card and List B document. The employee must present acceptable documentation to complete the I-9 Form within 90 days after the date of hire, or in the case of reverification, the date employment authorization expires.

Common example: An EAD (Form I-688B or Form I-766) is generally valid as evidence of work authorization for one year. The EAD may be renewed by the submission of a new application to the U.S. Citizenship and Immigration Services. Accordingly, a receipt acknowledging such an application is unacceptable.

Note: *A receipt is never acceptable for employment lasting for less than 3 working days.*

Source of Confusion:
(1) Social Security Cards. Please see Employer Information Bulletin 112.
(2) Multiple entries for document numbers and expiration dates must be filled out only where an employee has presented more than one document under one List (e.g., an unexpired passport with an unexpired Form I-94, unexpired passport with an unexpired Form I-94 and Form I-20 endorsed by the Designated School Official). All document numbers and expiration dates must be recorded.
(3) List A or List B documents from which the bearer cannot be identified are never acceptable even if unexpired.
(4) Unexpired foreign passport containing an unexpired I-551 ADIT stamp. This constitutes temporary evidence of permanent resident status and must be reverified at

the time the stamp expires; it does not constitute a receipt. The actual Form I-551, or "green card," should not be reverified even if it contains an expiration date.
DHS regulations provide that if it does not adjudicate an application for employment authorization within 90 days, it will grant an employment authorization document valid for

a period not to exceed 240 days. To receive an interim employment authorization document, the individual should contact his or her local office of United States Citizenship and Immigration Services (USCIS).

Discrimination

The law protects certain individuals from unfair immigration-related employment practices of a U.S. employer. The U.S. government entity charged with oversight of the laws protecting against unfair immigration-related employment practices is the Office of Special Counsel for Immigration Related Unfair Employment Practices, which is part of the Civil Rights Division of the U.S. Department of Justice.

Prohibited actions that will be viewed as discrimination include:

- Citizenship or immigration status discrimination with respect to hiring, firing and recruitment or referral for a fee, by employers with four or more employees, subject to certain exceptions. Employers may not treat individuals differently because they are, or are not, U.S. citizens or work authorized individuals. U.S. citizens, recent permanent residents, temporary residents, asylees and refugees are protected from citizenship status discrimination. Exceptions: permanent residents who do not apply for naturalization within six months of eligibility are not protected from citizenship status discrimination. Citizenship status discrimination which is otherwise required to comply with law, regulation, executive order or government contract is permissible by law.

- National origin discrimination with respect to hiring, firing and recruitment or referral for a fee, by employers with more than three and fewer than 15 employees. The Form I-9 process may not be used to pre-screen employees for hiring. Employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent or because they are perceived as looking or sounding "foreign." U.S. citizens and all work authorized individuals are protected from national origin discrimination. The Equal Employment Opportunity Commission has national origin jurisdiction over employers with 15 or more employees.

- Unfair documentary practices related to verifying the employment eligibility of employees. Employers may not, on the basis of citizenship status or national origin, request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others. Furthermore, an employer may not consider the fact that work authorization documents have future expiration dates as cause for not hiring or for terminating employment. In many cases, the employee will be granted an extension because of their employment

authorization. U.S. citizens and all work authorized immigrants are protected from document abuse.

- Retaliation. Individuals who file charges with OSC, who cooperate with an OSC investigation, who contest action that may constitute unfair documentary practices or discrimination based upon citizenship status or national origin, or who otherwise assert their rights under the INA's anti-discrimination provision are protected from retaliation.

Discrimination charges may be filed by a person who believes they are the victim of employment discrimination, a person acting on behalf of such an individual or an INS officer who believes that discrimination has occurred.

Charges of national origin discrimination against employers with 4 to14 employees and all charges of citizenship status discrimination against employers with 4 or more employees, should be filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) within the Department of Justice.

Discrimination charges must be filed within 180 days of the discriminatory act. Upon receipt of the discrimination charge, the OSC will notify the employer within 10 days that the charges have been filed and an investigation will be conducted. If the OSC has not filed a complaint with an administrative law judge within 120 days of receiving a charge of discrimination, it will notify the person making a charge of its determination not to file a complaint. The person making the charge (other than an INS officer) may file a complaint with an administrative law judge within 90 days after receiving the notice from the OSC. In addition, the OSC may still file a complaint within this 90-day period. The administrative law judge will conduct a hearing and issue a decision.

Reverification

When an employee's work authorization expires, his or her employment eligibility must be reverified. Section 3 of the Form I-9 may be used or, if Section 3 has already been used for a previous reverification or update, a new Form I-9 can be used. If a new form is used, the employee's name should be written in Section 1, Section 3 should be completed and the new form should be retained with the original. The employee must present a document that shows either an extension of the employee's initial employment authorization or new work authorization. If the employee cannot provide proof of current work authorization, an employer can not continue to employ them.

To maintain continuous employment eligibility, an employee with temporary work authorization should apply for new work authorization **at least 90 days** before the current expiration date. If the Service fails to adjudicate the application for employment authorization within 90 days, then the employee will be authorized for employment on Form I-688B for a period not to exceed 240 days.

Employers must reverify on the Form I-9 no later than the date the employee's work authorization expires.

Remember: Receipts showing that the employee has applied for an extension of an expired employment authorization document are not acceptable. (See Receipt Rule.)

Employees are not required to present, for reverification purposes, a new version of the same document that was presented to satisfy Section 2 but subsequently expired. Any document or combination of documents that would be acceptable to demonstrate work eligibility/authorization under Section 2 may be presented for reverification purposes. It is the employee's choice as to which document to present.

Permanent Resident Cards (also known as Alien Registration Receipt cards, Forms I-551, Resident Alien Cards, Permanent Resident Cards or "Green Cards") are issued to lawful permanent residents and conditional residents and **should not be reverified** when the cards expire. Temporary evidence of permanent resident status in the form of a temporary I-551 ADIT stamp in an unexpired foreign passport is subject to reverification. This is because of the temporary nature of this document. Likewise, documents from List B need **not** be reverified when they expire. In fact, documents from List B are acceptable even if they have already expired at the time that they are initially shown.

Most employers find it useful to institute a system that reminds them automatically, in advance, that a given employee's authorization document will expire. Advance warning assists both employees and employers, since early notice will usually allow employees time to renew the authorization prior to the expiration date and avoid penalties for employers. Enough advance warning is important so that the employee can apply for and receive replacement documents in time to maintain uninterrupted employment. Note that U.S. Citizenship and Immigration Services' processing of applications for work authorization or evidence of work authorization can take up to 90 days.

Rehires

When you rehire an employee, you must ensure that he or she is still authorized to work. You may do this by completing a new Form I-9 or you may reverify or update the original form by completing Section 3.

If you rehire an employee who had previously completed a Form I-9, you may reverify on the employees original Form I-9 (or on a new Form I-9 if Section 3 of the original has already been used) if:

- You rehire the employee within 3 years of the initial date of hire.
- The employee's previous grant of work authorization has expired but he or she is currently eligible to work on a different basis or under a new grant of work authorization than when the original Form I-9 was completed.

To reverify, you must:

- Record the date of rehire.
- Record the document title, number, and expiration date (if any) of any document(s) presented.
- Sign and date Section 3.
- If you are reverifying on a new form, write the employee's name in Section 1.

If you rehire an employee who has previously completed a Form I-9, you may update on the employee's original Form I-9 or on a new Form I-9 if:

- You rehire the employee within 3 years of the initial date of hire.

- The employee is still eligible to work on the same basis as when the original Form I-9 was completed.

To update, you must:

- Record the date of rehire;
- Sign and date Section 3; and
- If you are updating on a new form, write the employee's name in Section 1.

In all the situations described above with respect to rehired employees, you always have the option of completing Sections 1 and 2 of a new Form I-9 instead of completing Section 3.

Note: *Documentation for reverification purposes may be the renewed version of the originally presented document or any other acceptable document from List A or List C that demonstrates current work eligibility/authorization. List B documents do not need to be updated or reverified, even if expired.*

Minors

If a minor (person under the age of 18) cannot present a List A document or an identity document from List B, the Form I-9 should be completed in the following way:

- A parent or legal guardian must complete Section 1 and write "individual under age 18" in the space for the employee's signature.

- The parent or legal guardian must complete the "Preparer/Translator Certification" block.

- You should write "individual under age 18" in Section 2, List B, in the space after the words "Document #".

- The minor must present a List C document showing his or her employment eligibility. You should record the required information in the appropriate space in Section 2.

Missing Form I-9s

An employer who discovers that the Form I-9 is not on file for a given employee should request that the employee complete section 1 of the Form I-9 immediately and submit documentation as required in Section 2. The new form should be dated when completed, **never** post-dated. Employers may provide an explanatory annotation as to why the Form I-9 was not completed on a timely basis. When an employee does not provide acceptable documentation, the employer must terminate employment or risk being subject to penalties for "knowingly" continuing to employ an unauthorized worker if the individual is not in fact authorized to work.

Discovering Unauthorized Employees

It occasionally happens that an employer learns that an employee whose documentation appeared to be in order for Form I-9 purposes is not actually authorized to work. In such case, the employer should question the employee and provide another opportunity for review of proper Form I-9 documentation. If the employee is unable under such circumstances to provide satisfactory documentation, employment should be discontinued (alien employees who question the employer's determination may be referred to an Immigration field office for assistance). Employers should be aware that, if they know or should have known that an employee is unauthorized to work in the United States, they may be subject to serious penalties for "knowingly continuing to employ" an unauthorized worker.

Discovering False Documentation

False documentation includes documents that are counterfeit or those that belong to someone other than the employee who presented them. It occasionally happens that an employee who initially presented false documentation to gain employment subsequently obtains proper work authorization and presents documentation of this work authorization. In such a case, U.S. immigration law does not require the employer to terminate the employee's services. However, an employer's personnel policies regarding provision of false information to the employer may apply. The employer should correct the relevant information on the Form I-9.

Photocopies of Documents

There are two separate and unrelated photocopy issues in the employment eligibility verification process. First is whether an employer may accept photocopies of identity or employment eligibility documents to fulfill I-9 requirements. The answer is that only original documents (not necessarily the first document of its kind ever issued to the employee, but an actual document issued by the issuing authority) are satisfactory, with the single exception of a certified photocopy of a birth certificate.

Second is whether the employer may or must attach photocopies of documentation submitted to satisfy Form I-9 requirements to the employee's Form I-9. The answer is that this is permissible, but not required. Where this practice is undertaken by an employer, it must be consistently applied to every employee, without regard to citizenship or national origin. If such a copy is made, it must be retained with the Form I-9. The copying of any such document and the retention of the copy does not relieve the employer from the requirement to fully complete Section 2 of the Form I-9.

"Green Cards"

The terms *Resident Alien Card*, *Permanent Resident Card*, *Alien Registration Receipt Card* and *Form I-551* all refer to documentation issued to an alien who has been granted permanent residence in the U.S. Once granted, this status is permanent. However, the document that an alien carries as proof of this status may expire. Starting with the "pink" version of the Resident Alien Card (the "white" version does not bear an expiration date), and including the new technology Permanent Resident Cards, these documents are valid for either two years (conditional residents) or ten years (permanent residents). When these cards expire, the alien cardholders must

obtain new cards. An expired card cannot be used to satisfy Form I-9 requirements for new employment. Expiration dates do not affect current employment, since employers are neither required nor permitted to reverify the employment authorization of aliens who have presented one of these cards to satisfy I-9 requirements (this is true for conditional residents as well as permanent residents).

Note*: Even if unexpired, "green cards" must appear genuine and establish identity of the cardholder*.

Social Security Card Issues

The Social Security Administration (SSA) currently issues SSA numbers and cards to aliens only if they can present documentation of current employment authorization in the U.S. Aliens such as lawful permanent residents, refugees and asylees are issued unrestricted SSA cards that are undistinguishable from those issued to U.S. citizens. Note on restricted SSA and other cards:

SSA "Valid only with INS (or DHS) Authorization" card – issued to aliens who present proof of temporary work authorization these cards do not satisfy the Form I-9 requirements.

SSA "Not Valid for Employment" card – issued to aliens who have a valid non-work reason for needing a social security number (e.g., federal benefits, State public assistance benefits), but are not authorized to work in the U.S.

Internal Revenue Service (IRS) Individual Taxpayer Identification Numbers (ITINs) – issued to aliens dealing with tax issues (e.g., reporting unearned income such as savings account interest, investment income, royalties, scholarships, etc.). An Individual Taxpayer Identification Number card is **NOT** employment eligibility verification.

Aliens who satisfy I-9 requirements have been known to present a restricted SSA card for payroll administration purposes (consistent with advice from SSA and IRS). In cases like this, the employer needs to encourage the individual to report the change in status to SSA immediately.

Official Inspection of I-9 Records

Upon request, all Forms I-9 subject to the retention requirement must be made available in their original form or on microfilm or microfiche to an authorized official of the Bureau of Immigration and Customs Enforcement, Department of Labor and/or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices. The official will give employers at least 3 days advance notice before the inspection. Original documents (as opposed to photocopies) may be requested.

New Owners of Existing Businesses

In a case where a new owner of a business is a *successor in interest*, having acquired an existing business, the new employer may keep the acquired employer's I-9 records

rather than complete new Forms I-9 on employees who were also employees of the acquired employer. However, since the new employer would be responsible for any errors, omissions or deficiencies in the acquired records, it may choose to protect itself by having a new Form I-9 completed for each acquired non-exempt employee and attached to that employee's original Form I-9.

Remote Hires

It is not unusual for a U.S. employer to hire a new employee who doesn't physically come to that employer's offices to complete paperwork. In such cases, employers may designate agents to carry out their I-9 responsibilities. Agents may include notaries public, accountant, attorneys, personnel officers, foremen, etc. An employer should choose an agent cautiously, since it will be held responsible for the actions of that agent.

Note: *Employers should not carry out I-9 responsibilities by means of documents faxed by a new employee or through identifying numbers appearing on acceptable documents. The employer must review original documents. Likewise, Forms I-9 should not be mailed to a new employee to complete Section 2 himself or herself.*

Service Providers

Some business entities contract with professional employer organizations (PEOs) to handle the personnel and benefit aspects of the business. This may include completion and retention of Forms I-9. Where the business entity and the PEO are "co employers," one Form I-9 need be completed between the co-employers for each employee who was simultaneously hired by the co-employers. A business entity and PEO will be deemed a "co-employer" if, among other things, an employer/employee relationship is said to exist between the business entity and PEO on the one hand, and the individual on the other, even though the employee is only performing one set of services for both co-employers. Therefore, the authority to hire or terminate employment would have to be in the hands of both the business entity and the PEO. Since both entities are employing the individual, however, both entities remain equally responsible for meeting the Form I-9 requirements and equally liable for any failures to meet those requirements. Accordingly, the employer is fully responsible for errors, omissions and deficiencies in the PEO's processing.

Investigation Procedures

Enforcement

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is authorized to conduct investigations to determine whether employers have violated the prohibitions against knowingly employing unauthorized aliens and failing to properly complete, present or retain the Employment Eligibility Verification form (Form I-9) for newly hired individuals. If ICE believes that violations have occurred, ICE may issue a Warning Notice, a Technical or Procedural Failures Letter notifying the employer of technical or procedural failures in need of correction, or a Notice of Intent to Fine (NIF).

The Homeland Security Act of 2002 created an executive department combining numerous federal agencies with a mission dedicated to homeland security. On March 1, 2003, the authorities of the former INS were transferred to three new agencies in the Department of Homeland Security: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE). The two DHS immigration components most involved with the matters discussed in this guidebook are USCIS and ICE. USCIS is responsible for most documentation of alien work authorization, for the Form I-9 itself, and for the E-Verify Employment Eligibility Verification Program. ICE is responsible for enforcement of the penalty provisions of section 274A of the Act, and for other immigration enforcement within the United States.

Under the Homeland Security Act, the Department of Justice retained certain important responsibilities related to the Form I-9 as well. In particular, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in the Civil Rights Division is responsible for enforcement of the anti-discrimination provisions in section 274B of the Act, while the Executive Office for Immigration Review (EOIR) is responsible for the administrative adjudication of cases under sections 274A, 274B and 274C (civil document fraud) of the Act.

The OSC enforces the provisions against discrimination. OSC covers all cases of discrimination based on citizenship status by employers of four or more employees. It covers national origin discrimination with employers of four to fourteen employees. The EEOC has jurisdiction over employers of 15 or more.

Investigation

DHS, OSC and DOL give employers three day’s notice prior to inspecting retained Forms I-9. The employer must make Forms I-9 available upon request at the location where DHS, OSC or DOL requests to see them.

If you store Forms I-9 at an off-site location, inform the inspecting officer of the location where you store them, and make arrangements for the inspection. The inspecting officers can perform your inspection at an office of an authorized agency of the United States if previous arrangements are made. Recruiters or referrers for a fee who designate an employer to complete employment verification procedures may present a photocopy or printed electronic image of the Form I-9 at an inspection. If you refuse or delay an inspection, you will be in violation of DHS retention requirements.
At the time of an inspection, you must:

1. Retrieve and reproduce only the Forms I-9 electronically retained in the electronic storage system and supporting documentation specifically requested by the inspecting officer. This documentation includes associated audit trails that show who has accessed a computer system and the actions performed within or on the computer system during a given period of time.

2. Provide the inspecting officer with appropriate hardware and software, personnel, and documentation necessary to locate, retrieve, read and reproduce any electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports and other data used to maintain the authenticity, integrity, and reliability of the records.

3. Provide the inspecting officer, if requested, any reasonably available or obtainable electronic summary file(s), such as a spreadsheet, containing all of the information fields on all of the electronically stored Forms I-9.

Penalties

Civil Penalties
The Department of Homeland Security (DHS) may impose penalties if an investigation reveals that an employer has knowingly hired or knowingly continued to employ an unauthorized alien, or has failed to comply with the employment eligibility verification requirements, with respect to employees hired after November 6, 1986. DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. Employers who receive a NIF may request a hearing before an administrative law judge. If an employer's request for a hearing is not received within 30 days, DHS will impose the penalty and issue a Final Order, which cannot be appealed.

Hiring or continuing to employ unauthorized aliens

An employer found to have knowingly hired, recruited or referred for a fee, or continued to employ, an unauthorized alien for employment in the United States will be subject to an order to cease and desist from the unlawful behavior and to pay a civil fine as follows:

1. First Offense: Not less than $275 and not more than $2,200 for each unauthorized alien.
2. Second offense: Not less than $2,200 and not more than $5,500 for each unauthorized alien.
3. Subsequent Offenses: Not less than $3,300 and not more than $11,000 for each unauthorized alien.

These penalties are not limited to employees for whom employers complete and retain I-9 files, but also cover employers' use of contract personnel, after November 6, 1986, known to them to be unauthorized to work in the United States. If an employer can demonstrate compliance with Form I-9 requirements, a good faith defense with respect to a charge of knowingly hiring an unauthorized alien will have been established unless the government can prove otherwise.

Failing to comply with the Form I-9 requirements

Employers who fail to properly complete, retain and/or make available for inspection Forms I-9 as required by law, may face civil money penalties in an amount of not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred.

In determining the amount of the penalty, DHS will consider:

1. The size of the business of the employer being charged.
2. The good faith of the employer.
3. The seriousness of the violation.
4. Whether or not the individual was an unauthorized alien.
5. The history of previous violations of the employer.

Enjoining pattern or practice violations

If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A(a)(1)(A) or (2) of the Act, the Attorney General may bring civil action in the appropriate U.S. District Court requesting relief, including a permanent or temporary injunction, restraining order or other order against the person or entity, as the Attorney General deems necessary.

Requiring indemnification

Employers found to have required a bond or indemnity from an employee against liability under the employer sanctions laws may be ordered to pay a civil money penalty of $1,000 for each violation and to make restitution, either to the person who was required to pay the indemnity, or, if that person cannot be located, to the U.S. Treasury.

Good faith defense

If the employer can show that he or she has in good faith complied with the Form I-9 requirements, then the employer has established a “good faith” defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that the employer had actual knowledge of the unauthorized status of the employee.
A good faith attempt to comply with the paperwork requirements of Section 274A(b) of the Act may be adequate notwithstanding a technical or procedural failure to comply, unless the employer has failed to correct the violation within 10 days after notice from DHS, or the employer is engaging in a pattern or practice of violations.

Criminal Penalties
Persons or entities who are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing that they are or have become unauthorized to work in the United States) after November 6, 1986, may face fines of up to $3,000 per employee and/or six months imprisonment.

Persons who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another person, or who make a false statement or attestation for purposes of satisfying the employment eligibility verification

requirements, may be fined or imprisoned for up to five years, or both. Other federal criminal statutes may provide higher penalties in certain fraud cases.

Unlawful Discrimination

If an investigation reveals that an employer has engaged in unfair immigration-related employment practices under the INA, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) may take action. An employer will be ordered to stop the prohibited practice and may be ordered to take one or more corrective steps, including:

1. Hire or reinstate, with or without back pay, individuals directly injured by the discrimination.
2. Post notices to employees about their rights and about employers' obligations.
3. Educate all personnel involved in hiring and in complying with the employer sanctions and antidiscrimination laws about the requirements of these laws.

The court may award attorney's fees to prevailing parties, other than the United States, if it determines that the losing parties' argument is without foundation in law and fact. Employers who commit citizenship status or national origin discrimination in violation of the anti-discrimination provision of the INA may also be ordered to pay a civil money penalty as follows:

1. First Offense: Not less than $275 and not more than $2,200 for each individual discriminated against.
2. Second Offense: Not less than $2,200 and not more than $5,500 for each individual discriminated against.
3. Subsequent Offenses: Not less than $3,300 and not more than $11,000 for each individual discriminated against.

Employers who commit document abuse such as requesting more or different documents than an employee has chosen to present from List A or Lists B and C, in violation of the anti-discrimination provision of the INA, may similarly be ordered to pay a civil money penalty as follows:

1. Not less than $110 and not more than $1,100 for each individual discriminated against.

If an employer is found to have committed national origin discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), it may be ordered to stop the prohibited practice and to take one or more corrective steps, including:

1. Hire, reinstate or promote with back pay and retroactive seniority.
2. Post notices to employees about their rights and about the employer's obligations.
3. Remove incorrect information, such as a false warning, from an employee's personnel file.

Under Title VII, compensatory damages may also be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses and for mental anguish and inconvenience. Punitive damages may be available if the employer acted with malice or reckless indifference.

The employer may also be required to pay attorneys' fees, expert witness fees and court costs.

Civil Document Fraud

If a DHS investigation reveals that an individual has knowingly committed or participated in acts relating to document fraud, DHS may take action. It is unlawful for any person or entity knowingly to engage in any of the following activities:

- Forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA) or to obtain a benefit under the INA.

- Use, attempt to use, posses, obtain, accept, or receive or to provide any forged, counterfeit, altered or falsely made document for the purpose of satisfying a requirement of the INA or to obtain a benefit under the INA.

- Use or attempt to use or to provide or attempt to provide any document lawfully issued to a person other than the possessor, including a deceased individual for the purpose of satisfying a requirement of the INA or to obtain a benefit under the INA.

- Accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor for the purpose of complying with the employment eligibility verification requirements or obtaining a benefit under the INA.

- Prepare, file, or assist another in preparing or filing, any application for benefits under the INA, or any document required under the INA, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted.

- Present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and to fail to present such document to an immigration officer upon arrival at a United States port of entry.

DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. Persons who receive a NIF may request a hearing before an administrative law judge. If DHS does not receive a request for a hearing within 30 days, it will impose the penalty and issue a Final Order, which is final and cannot be appealed.

Individuals found by DHS or an administrative law judge to have violated Section 274C of the Act may be ordered to pay a civil money penalty as follows:

To cease and desist from such behavior
To pay a civil penalty as follows:

a. First offense: Not less than $275 and not more than $2,200 for each fraudulent document that is the subject of the violation; or
b. Subsequent offenses: Not less than $2,200 and not more than $5,500 for each fraudulent document that is the subject of the violation.

Recordkeeping Requirements and Best Practices

Recordkeeping

All of an employer's current employees (unless exempt) must have Forms I-9 on file. A retention date can only be determined at the time an employee is terminated. It is determined by calculating and comparing two dates. To calculate date A, the employer should add three years to the hire date. To calculate date B, the employer should add one year to the termination date. Whichever of the two dates is later in time is the date until which that employee's Form I-9 must remain in the employer's employment eligibility verification files.

An employer may, but is not required to, copy a document (front and back) presented by an individual solely for the purpose of complying with the Form I-9 verification requirements. If such a copy is made, it must be retained with the Form I-9. The copying of any such document and the retention of the copy does not relieve the employer from the requirement to fully complete Section 2 of the Form I-9. If employers choose to keep copies of Form I-9 documentation, then the same should be done for all employees, and the copies should be attached to the related Form I-9. Employers should not copy the documents only of individuals of certain national origin or citizenship status. To do so may constitute unlawful discrimination under section 274B of the Immigration and Nationality Act.

Electronic Signatures and Retention of Form I-9

On October 30, 2004, the President signed legislation into law (Public Law 108-390) authorizing employers to retain Forms I-9 in electronic format, in addition to the current choices of paper, microfilm or microfiche. The legislation also authorizes attestations on the Form I-9 to be manifested by an electronic signature. The legislation prescribed an effective date of April 28, 2005.

Under this law, employers will have a variety of electronic Form I-9 options. For example, employers may interpret the law to mean that they may continue to complete Forms I-9 on paper but choose to store the forms electronically. Alternatively, employers may choose to both complete and retain the Form I-9 wholly electronically.

Employers who choose to use the electronic I-9 storage system must use a system that includes:

- Reasonable controls to ensure the integrity, accuracy and reliability of the electronic storage generation or storage system.
- Reasonable controls to prevent and detect unauthorized use or the accidental deletion or alteration of completed and electronically stored Form I-9s.
- Program to train employees in the minimization of unauthorized or accidental alteration or erasure of records.
- Timestamp entry to appear every time a Form I-9 is accessed and a particular action taken.

- Backup and recovery of records to protect against information loss, such as power interruptions.

- Inspection and quality assurance program evidenced by regular evaluations of the electronic generation or storage system, including periodic checks of the electronically stored Form I-9, including the electronic signatures.

- Retrieval system that includes an index permitting searches and filtering by any data element. Also, the employer's storage system must not limit or restrict access in any way to an agency of the United States.

- The ability to reproduce legible and easily readable paper copies.

The system used to capture the electronic signature must include a method to acknowledge that the attestation to be signed has been read by the signatory. The electronic signature must be attached to, or logically associated with, an electronically completed Form I–9. In addition, the system must:

- Affix the electronic signature at the time of the transaction.

- Create and preserve a record verifying the identity of the person producing the signature.

- Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

Currently, electronic signatures are accomplished using various technologies, such as electronic signature pads, Personal Identification Numbers, biometrics and "click to accept" dialog boxes.

Employers who choose to go paperless must be able to demonstrate that their system for electronic storage is:

- Maintained properly

- Protected against tampering

- Signatures (employee or employer) can be authenticated

Employers will also be required upon request to provide the DHS with documentation of the process that:

1) Produced and stored the I-9s.
2) Modified and maintained the I-9s.
3) Established the authenticity and integrity of the I-9, such as audit trails.

The electronic storage system used by an employer to retain the Form I-9 may include a quality assurance program that includes regular evaluations of the system. Such evaluations could include periodic checks of electronically stored data and methods to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored data.

In the case of a Form I-9 inspection by officers of DHS, OSC and DOL, employers will still be given a three day notice. Form I-9s must be presented in either paper, microfilm,

microfiche or electronic format. To facilitate inspections, employers may consider an electronic storage system that includes an indexing system and ability to reproduce legible and readable hardcopies of electronically stored Forms I-9.

There are a number of real and potential advantages that employers are likely to realize through use of electronic Forms I-9:

- Many employers may experience cost savings by storing Forms I-9 electronically rather than using conventional filing and storage of paper copies or transferring the forms to microfilm or microfiche.

- Electronic forms will allow employers to better ensure that each Form I-9 is properly completed and retained. Some employers may find that electronic completion and storage renders the process less prone to error.

- Electronically retained Forms I-9 are more easily searchable, which is important for re-verification, quality assurance and inspection purposes. This will be especially helpful and cost-effective for large employers that have job sites across the country or that have high employee turnover rates.

Best Practices

- Treat all people the same when announcing a job, taking applications, interviewing, offering a job, verifying eligibility to work and in hiring and firing.

- Avoid "citizen-only" or "permanent resident-only" hiring policies unless required by law, regulation or government contract. In most cases, it is illegal to require job applicants to be U.S. citizens or have a particular immigration status.

- Give out the same job information over the telephone to all callers, and use the same application form for all applicants.

- Accept documentation presented by an employee if it establishes identity and employment eligibility, is included in the list of acceptable documents and reasonably appears to be genuine and to relate to the person.

- Accept documents that appear to be genuine. You are not expected to be a document expert, and establishing the authenticity of a document is not your responsibility.

- Base all decisions about firing on job performance and/or behavior, not on the appearance, accent, name or citizenship status of your employees.

- Complete the I-9 Form and keep it on file for at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later.

This means that you must keep I-9s on file for all current employees. You must also make the forms available to government inspectors upon request.

- On the I-9 Form, verify that you have seen documents establishing identity and work authorization for all employees hired after November 6, 1986, including U.S. citizens.

- Remember that many work authorization documents (I-9 Form Lists A and C) must be renewed. On the expiration date, you must reverify employment authorization and record the new evidence of continued work authorization on the I-9 Form. You must accept any valid document your employee chooses to present, whether or not it is the same document provided initially. Individuals may present an unrestricted Social Security card to establish continuing employment eligibility.

- Develop a reverification reminder system to ensure I-9s are checked in a timely manner.

- Be aware that U.S. citizenship, or nationality, belongs not only to persons born in the United States but also to all individuals born to a U.S. citizen, and those born in Puerto Rico, Guam, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa and Swains Island. Citizenship is granted to legal immigrants after they complete the naturalization process.

- Establish an internal training program, with annual updates, on how to manage completion of Form I-9 (Employee Eligibility Verification Form) and how to detect fraudulent use of documents in the I-9 process.

- Arrange for annual I-9 audits by an external auditing firm or a trained employee not otherwise involved in the I-9 and electronic verification process.

- Establish a self-reporting procedure for reporting to ICE any violations or discovered deficiencies.

- Create a protocol for responding to no-match letters received from the Social Security Administration.

- Establish a Tip Line for employees to report activity relating to the employment of unauthorized aliens, and a protocol for responding to employee tips.

- Establish a protocol for assessing the adherence to the “best practices” guidelines by the company’s contractors/subcontractors.

- Establish uniform company policies regarding I-9s that address issues such as photocopying, interview questions and employment verification.

- Establish a backup system to ensure timely compliance with I-9 rules when a human resource professional is out of the office.

Regulatory Text

[Federal Register: December 17, 2008 (Volume 73, Number 243)]
[Rules and Regulations]
[Page 76505-76517]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr17de08-1]

Rules and Regulations
Federal Register

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[CIS No. 2441-08; Docket No. USCIS-2008-0001]
RIN 1615-AB69

Documents Acceptable for Employment Eligibility Verification

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing the types of acceptable identity and employment authorization documents and receipts that employees may present to their employers for completion of the Form I-9, Employment Eligibility Verification. Under this interim rule, employers will no longer be able to accept expired documents to verify employment authorization on the Form I-9. This rule also adds a new document to the list of acceptable documents that evidence both identity and employment authorization and makes several technical corrections and updates. The purpose of this rule is to improve the integrity of the employment verification process so that individuals who are unauthorized to work are prevented from obtaining employment in the United States. A copy of the amended Form I-9 reflecting these and other form-related changes is being published as an attachment to this rule.\1\

\1\ Note: Form I-9 is published for informational purposes only and will not be codified in Title 8 of the Code of Federal Regulations.

DATES: Effective Date. This rule is effective February 2, 2009.
Comment Date: Written comments must be submitted on or before February 2, 2009.

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SUPPLEMENTARY INFORMATION: The supplementary section is organized as follows:

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II. Background and Purpose

All employers and agricultural recruiters and referrers for a fee \2\ (hereinafter collectively referred to as “employer(s)'') are required to verify the identity and employment authorization of each individual they hire for employment in the United States, regardless of the individual's citizenship. See Immigration and Nationality Act (INA) section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). As part of the verification process, employers must complete the Form I-9, “Employment Eligibility Verification,'' retain the form for a statutorily-established period of time, and make the form available for inspection by certain government officials. See INA sec. 274A(b), 8 U.S.C. 1324a(b); 8 CFR 274a.2. On the Form I-9, a newly-hired employee must attest to being a U.S. citizen or national, a lawful permanent resident (LPR), or an alien authorized to work in the United States. The employee then must present to his or her employer a document or combination of documents designated by statute and regulation as acceptable for establishing identity and employment authorization. The employer must examine the documents, record the document information on Form I-9, and attest that the documents reasonably appear both to be genuine and to relate to the individual presenting the documents.

\2\ Title 8 CFR 274a.2(a)(1) provides that ``[f]or purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who

is either an agricultural associations, agricultural employers, or farm labor contractors (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470)." * * * See 8 CFR 274a.2(a)(1).

The Form I-9 has three categories of documents that may be accepted, alone or in combination, by employers for employment authorization verification:

(1) List A--documents that establish both identity and employment authorization \3\ (e.g., U.S. passport; Form I-551, “Permanent Resident Card;" and Form I-766, “Employment Authorization Document");

\3\ Current regulations use the term “employment eligibility'' rather than “employment authorization." To be consistent with the statute, this rulemaking uses the term “employment authorization.'' See INA sec. 274A(b)(1)(B) and (C), 8 U.S.C. 1324a(b)(1)(B) and (C).

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(2) List B--documents that establish only identity (e.g., State-issued driver's license or identification card); and

(3) List C--documents that establish only employment authorization (e.g., State-issued birth certificate and social security account number card).

See INA sec. 274A(b)(1)(B), (C) and (D), 8 U.S.C. 1324a(b)(1)(B), (C) and (D); 8 CFR 274a.2(b)(1)(v)(A), (B) and (C). An individual must present to his or her employer either one document from List A or one document each from List B and List C. The employer may not specify a document or combination of documents that the employee must present. INA sec. 274B(a)(6), 8 U.S.C. 1324b(a)(6); 8 CFR 274a.1(l)(2).

If the employee cannot present an acceptable document from one of the three lists, he or she may present an acceptable substitute document, referred to as a “receipt." 8 CFR 274a.2(b)(1)(vi) (commonly referred to as ``the receipt rule''). The receipt satisfies the document presentation requirement for a short period of time, at the end of which the employee must present the actual document or other document(s) specified in the regulations as acceptable to present. An employer may accept a receipt, however, only under specific circumstances prescribed under 8 CFR 274.a.2(b)(1)(vi). For example, if a document acceptable under Lists A, B, or C is stolen or lost, the new hire may provide a receipt for the application for the replacement document, in lieu of the actual document, as long as he or she provides the replacement document within 90 days of hire. If the individual employee is an alien whose employment authorization or employment authorization documentation expires, the employer must reverify the employee's continued employment authorization by the expiration date by reviewing any acceptable list A or list C document.\4\ 8 CFR 274a.2(b)(1)(vii).

\4\ Note that an expiration date on Form I-551 does not trigger the reverification requirement. See “Handbook for Employers, Instructions for Completing the Form I-9" (M-274) (Rev. 11/01/07), http://www.uscis.gov, ``Handbook for Employers'') page 26.

The former Immigration and Naturalization Service (INS) issued the first Form I-9 and list of acceptable documents in 1987. 52 FR 16216-01 (May 1, 1987) (regulatory list of acceptable documents); 52 FR 21454-01 (Jun. 5, 1987) (Notice introducing Form I-9); see also 53 FR 8611-01 (Mar. 16, 1988). After reports that the large number of acceptable Form I-9 documents led to employer confusion and that a reduction in the number of documents could lead to less employment discrimination, INS published rules in 1993 and 1995 proposing reductions in the number of acceptable documents. See 60 FR 32472-01 (Jun. 22, 1995); 58 FR 61846-01 (Nov. 23, 1993). Thereafter, in response to legislative action reducing the statutory list of acceptable documents,\5\ INS published an interim rule in 1997 and a proposed rule in 1998. 62 FR 51001 (Sept. 30, 1997) (interim rule), modified by 64 FR 6187 (Feb. 9, 1999); 63 FR 5287 (Feb. 2, 1998) (proposed rule). On November 7, 2007, USCIS issued a press release notifying the public that the Form I-9 had been revised to reflect changes to documents implemented under the 1997 interim rule. See “USCIS Revises Employment Eligibility Verification Form" (Nov. 7, 2007) at http://www.uscis.gov/files/pressrelease/FormI9Update110707.pdf. This press release was followed by a notice published in the Federal Register describing the changes made to the Form I-9 and stating when DHS will begin enforcing the changes. 72 FR 65974-01 (Nov. 26, 2007). Neither the former INS nor USCIS published a final rule following the 1998 proposed rule. Instead, this rulemaking action supersedes the 1998 NPRM, although comments received during that rulemaking action informed the development of this rulemaking action.

\5\ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), section 412, Pub. L. No. 104-208, 110 Stat. 3009-666 (1996).

DHS recognizes that the Form I-9 process plays an integral role in ensuring a legal workforce in the United States and is committed to minimizing vulnerabilities in the Form I-9 process. As is evident from past legislative action and rulemaking efforts, an overly expansive Form I-9 document list that includes expired documents compromises the effectiveness and security of the Form I-9 process. After reevaluating the statutory requirements (INA sec. 274A(b)(1), 8 U.S.C. 1324a(b)(1)) and reviewing the regulatory list of documents currently acceptable for the Form I-9, DHS has identified several aspects of the list that are in need of change in order to strengthen the effectiveness of the Form I-9 process. In so doing, this interim rule introduces a requirement that all documents must be unexpired for the Form I-9. DHS invites post-promulgation comments from the public on this interim rule for consideration in a subsequent final rule.

III. Changes to the List of Acceptable Documents and Receipts

A. Requiring Unexpired, Valid Documents

Under current regulations, the U.S. passport and all List B documents are acceptable for the Form I-9 even if they are expired. See 8 CFR 274a.2(b)(1)(v)(A)(1) and (B). Using its authority to place conditions on acceptable documents for the Form I-9 (see INA sec. 274A(b)(1)(E), 8 U.S.C. 1324a(b)(1)(E)), DHS is providing in this rule that expired documents are no longer acceptable for the Form I-9. See revised 8 CFR 274a.2(b)(1)(v). DHS has determined that this action is necessary to ensure that acceptable documents reliably establish identity and employment authorization and that documents that are used fraudulently to an unacceptable degree are not included on the list of acceptable documents. Expired documents are prone to fraudulent use in the Form I-9 process by aliens seeking unauthorized employment. Being of little use to their owners, expired documents fall prey to counterfeiters who, for a small sum, can substitute unauthorized aliens' photographs and other identifying information. Unauthorized aliens then use these documents to obtain employment. Establishing a requirement that all documents must be unexpired closes this loophole and sets a bright-line standard for U.S. employers. Moreover, such a requirement honors the limits placed by document issuance authorities on their documents. Finally, by requiring unexpired documents, there is a greater likelihood that such documents will contain up-to-date security features that will make them less vulnerable to counterfeiting and fraud.

In its 1998 proposed rule, the former INS proposed precluding expired documents from use for the Form I-9. 63 FR at 5302. Out of the 73 comments received in response to the proposed rule, 15 comments addressed this proposal. Five commenters favored the change. Ten commenters indicated a clear preference against the change, focusing primarily on identity documents with some specifying that their objection applied to List B documents only. Those who favored the change stated that expired documents do not provide a reliable representation of the holder's identity, such as when the expired document includes an outdated photograph.

DHS considered the comments from the 1998 proposed rule for this interim rule and has noted them in this discussion to acknowledge that some members of the public may face challenges in accessing unexpired documents for Form I-9 purposes. As stated above, DHS believes that precluding the use of expired documents for the Form I-9 is essential for improving the security of the employment verification process. The U.S. Department of State (DOS), DHS, and many States have taken and are continuing to take significant steps to improve the security features of their documents. See Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005; REAL ID Act of 2005, div. B, Public Law No. 109-13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. 30301 note); Enhanced Border Security and Visa Entry Reform Act of 2002, section 303(b), Public Law 107-173, 116 Stat. 543, 553 (2002). In keeping with these efforts, DHS has determined that it is appropriate to amend the regulations governing the Form I-9 process to require that all documents must be unexpired to be acceptable for the Form I-9.

To modify the current regulations, this rule removes the terms “unexpired" and “expired" from those documents currently listed in the regulations with these limitations (e.g., “unexpired foreign passport that contains a temporary I-551 stamp" and “unexpired Employment Authorization Document"). Rather than modify each acceptable document with the term “unexpired," this rule imposes a general requirement that all documents must be unexpired to be acceptable for the Form I-9. See revised 8 CFR 274a.2(b)(1)(v). A document containing no expiration date, such as the Social Security account number card, will be deemed unexpired.

DHS invites comments on whether this rule's prohibition on the use of expired documents for the Form I-9 should be modified to permit employers to accept List B identity documents that have expired within the last 90 days (or other limited time period) of the date they are presented to the employer for the Form I-9.

B. Adding Documentation for Citizens of the Federated States of Micronesia and the Republic of the Marshall Islands

In 2003, the Compacts of Free Association between the United States and the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) were amended. See Compact of Free Association Amendments Act of 2003, Public Law 108-188 (2003). Under both the preexisting Compacts and the Compacts as amended, most citizens of the RMI and the FSM are eligible for admission to the United States as nonimmigrants, including the privilege of residing and working in the United States. The amendments to the Compacts included provisions that eliminated the need for citizens of the FSM and the RMI to obtain an Employment Authorization Document (Form I-766), although they may still apply for one if they wish. As provided by the Compact Amendments, FSM and RMI citizens admitted under the Compacts may present valid FSM or RMI passports with evidence of their admission under the Compacts to satisfy Form I-9 requirements.\6\ To conform the Form I-9 regulations with the requirements of the Compacts, USCIS is including a List A provision specifically tailored to these FSM and RMI citizens. See new 8 CFR 274a.2(b)(1)(v)(A)(6).

\6\ There is also a Compact of Free Association with the Republic of Palau (Compact of Free Association Approval Act, Pub. L. No. 99-658 (Nov. 14, 1986)) providing similar employment and residency privileges for citizens of Palau, but the Compact has not been amended to include a similar Form I-9 documentation provision. Therefore, the amendment to the regulations does not include Palau.

C. Revising References to Temporary I-551s

List A refers to temporary I-551 stamps in unexpired foreign passports as acceptable documents. See 8 CFR 274a.2(b)(1)(v)(A)(3). DHS issues temporary I-551 stamps to LPRs on either unexpired foreign passports or Forms I-94, ``Arrival-Departure Record," to serve as temporary documentation of LPR status while they wait

for the actual Form I-551. Although the regulations refer to temporary I-551 “stamps,'' DOS has been affixing machine-readable immigrant visas (MRIVs) that contain a pre-printed temporary I-551 notation in the foreign passports of aliens immigrating to the United States for several years. The pre-printed temporary I-551 notation is triggered after the bearer is admitted to the United States as an LPR. To update the regulations to reflect this alternate temporary I-551 document, this rule modifies the reference in List A to temporary I-551 stamps on unexpired foreign passports to include pre-printed temporary I-551 notation on MRIVs. 8 CFR 274a.2(b)(1)(v)(A)(3). Because the pre-printed notation is not included on Forms I-94, this rule does not make any changes to regulatory references to temporary I-551 stamps on Forms I-94. See 8 CFR 274a.2(b)(1)(vi)(B).

D. Eliminating Forms I-688, I-688A, and I-688B

DHS notes that Form I-688, “Temporary Resident Card,'' and Forms I-688A and I-688B, “Employment Authorization Cards,'' are no longer issued and has determined that any such documents that were previously issued have expired. Therefore, this rule removes these documents from List A and any references to the documents in the receipt provision at 8 CFR 274a.2(B)(1)(vi)(C). USCIS now issues Forms I-766 to those who formerly received Forms I-688, I-688A, or I-688B. The Form I-766 remains on List A. 8 CFR 274a.2(b)(1)(v)(A)(4).

E. Adding References to Form I-94A

This rule updates the list of acceptable documents and receipts by including “Form I-94A'' next to each reference to the Form I-94, “Arrival-Departure Record.'' See revised 8 CFR 274a.2(b)(1)(v)(A)(5) and (b)(1)(vi)(B) and (C). The Form I-94A is nearly identical to the Form I-94 except that all fields are computer-generated rather than being annotated by hand.

F. Revising Reference to Social Security Account Number Card (“Social Security Card'')

This interim rule replaces the current reference to the List C document, “Social Security number card,'' with the statutory term “Social Security account number card.'' Revised 8 CFR 274a.2(b)(1)(v)(C)(1). This document is commonly referred to as the Social Security card. The rule also revises the restriction on the acceptability of Social Security account number cards. The statute provides that a Social Security account number card, “other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States'' is an acceptable List C document. See INA sec. 274A(b)(1)(C)(i), 8 U.S.C. 1324a(b)(1)(C)(i). The current regulations provide that unacceptable cards are those that include the following legend: “not valid for employment purposes.'' 8 CFR 274a.2(b)(1)(v)(C)(1). Over the years since Social Security account number cards have included employment restrictions, the legend printed on the face of the cards has changed. Therefore, the restriction stated in the current regulations is inadequate. This rule revises the restriction to track the statutory language.

IV. Technical Changes

A. Correcting References to Employment Eligibility

This interim rule replaces the term “employment eligibility'' with “employment authorization'' in each place that “employment eligibility'' appears in the verification provisions of the regulations relevant to the substantive changes made by this rule, 8 CFR 274a.2(a) and (b)(1). This change is necessary to conform the regulations to the statute, which uses the “employment eligibility.'' See INA sec. 274A(b)(1)(B) and (C), 8 U.S.C. 1324a(b)(1)(B) and (C).

In addition, DHS revised the section heading to 8 CFR 274a.2 to more accurately reflect the contents of this section. Currently, the section heading reads, “Verification of employment eligibility.'' This rule revises the section heading to read, “Verification of identity and employment authorization.''

B. Replacing References to the Former INS

This rule deletes references to the former INS or replaces such references with “DHS'' wherever “INS'' appears in the provisions affected by this rule. See revised 8 CFR 274a.2(b)(1)(v)(A)(4) and (b)(1)(v)(C)(6), (7), and (8). After a transfer of functions to DHS, the INS was abolished in March 2003. See 6 U.S.C. 291; Homeland Security Act of 2002, Public Law No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

C. Correcting References to Certificates of Birth Abroad in List C

Current regulations incorrectly identify the List C documents, Forms FS-545 and DS-1350 issued by the Department of State, as “Certification of Birth Abroad.'' 8 CFR 274a.2(b)(1)(v)(C)(2) and (3). This rule corrects this error. The Form FS-545 is correctly entitled, “Certification of Birth,'' and Form DS-1350 is correctly entitled, “Certification of Report of Birth.''

V. Form Changes

In implementing the regulatory changes being made by this rule, DHS also is revising the Form I-9 itself. Changes to the Form I-9, in addition to revisions to the list of acceptable documents, include:

In Section 1, making “citizen of the United States'' and “noncitizen national of the United States, as defined in 8 U.S.C. 1408'' two separate categories in the employee attestation part of the form. Currently, the first box in that section states: “A citizen or national of the United States.'' Separating those two groups will eliminate one difficulty that currently exists when prosecuting those who make false claims to U.S. citizenship. Noncitizen nationals of the United States are persons born in American Samoa as provided in section 308 of the INA, 8 U.S.C. 1408; certain former citizens of the former Trust Territory of the Pacific Islands who relinquished their U.S. citizenship acquired under section 301 of Public Law 94-241 (establishing the Commonwealth of the Northern Mariana Islands) by executing a declaration before an appropriate court that they intended to be noncitizen nationals rather than U.S. citizens; and certain children of noncitizen nationals born abroad, as provided by section 308 of the INA, 8 U.S.C. 1408. A definition of noncitizen national is added to the instructions to the Form I-9.

In Section 1, replacing “An alien authorized to work until --/--/-- (Alien or Admission ----------" with “An alien authorized to work (A or Admission ------ ------) until (expiration date, if applicable--month/day/year) --/--/--".

In the form instructions, including a paragraph that clarifies when employers need to reverify certain employees to read as follows:

“Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present in Section 2 evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).''

Form I-9 will be included as an attachment to this rule. It will also be made available in Spanish and posted on the USCIS Web site (http://www.uscis.gov) at a later date.

VI. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for “good cause," finds that those procedures are “impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b)(B). DHS finds advance notice and comment for this rule to be impracticable, unnecessary, and contrary to the public interest.

In its 1998 proposed rule, the former INS proposed precluding expired documents from use for the Form I-9. 63 FR at 5302. The INS received 15 comments on the proposal to remove expired documents as discussed above. Therefore, although the INS did not finalize that NPRM, USCIS has considered those public comments in the development of this interim rule and DHS has concluded that further public comment on this issue would be unnecessary under the APA.

DHS understands that this rule is a change in its longstanding practice of accepting expired documents. However, advances in technology since the original issuance of these regulations and Form I-9, especially in recent years, increase the need for DHS to make sure that documents accepted for identity and work authorization purposes have sufficient security features and continue to ensure the integrity of the employment verification process.\7\ Employment documentation requirements must be strengthened as soon as possible in order for DHS enforcement capabilities to stay ahead of document counterfeiters; requiring that documents be unexpired is one way to help ensure this. Continued delay created by the notice and comment requirements would result in additional damage to these important interests.

\7\ DHS Fact Sheet: Combating Fraudulent Documents. August 1, 2006. Available at http://www.dhs.gov/xnews/releases/pr_1158347347660.shtm.

Accordingly, DHS finds that good cause exists under 5 U.S.C. 553(b) to issue this rule as an interim rule. DHS nevertheless invites written comments on this interim rule and will consider those comments in the development of a final rule in this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, when an agency invokes the good cause exception under the Administrative Procedure Act (APA) to make changes effective through an interim final rule, the RFA does not require the agency to prepare a regulatory flexibility analysis. This rule makes changes for which notice and comment are not necessary and, accordingly, USCIS has not prepared a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. As outlined in the Executive Order 12866 section of this rule below, this rule may result in the expenditure in the aggregate by the private sector of more than $100 million in the first year following its publication. However, there are no recurring costs and it will not significantly or uniquely affect small governments or other small entities. Further, no action on the part of any state, tribe, or other governmental entity is required by this rule's changes. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804.

E. Executive Order 12866

This rule is considered by DHS to be an “economically significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this interim rule has been reviewed by the Office of Management and Budget.

Employees are already completing, and employers are already retaining, Forms I-9. Employers are also

conducting re-verifications when employment authorization expires. Likewise, U.S. Immigration and Customs Enforcement (ICE) agents already conduct Form I-9 enforcement actions. Therefore, this interim rule is not expected to impose significant new or recurring costs on employers, new employees, or the government.

Costs for employers. After publication of this rule, there will be some costs associated with becoming familiar with the new requirements, switching to the new forms, and retraining personnel who are familiar with the existing requirements. All employers and agricultural recruiters and referrers for a fee are required to verify the identity and employment authorization of each individual they hire for employment in the United States, regardless of the individual's citizenship. The number of employees hired each year varies greatly among firms as does the number of employees that each firm has devoted to the hiring process. Based on an analysis of data from the U.S. Department of Agriculture, National Agricultural Census \8\, and, U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics,\9\ DHS has determined that there are approximately 554,000 farms, around 90,000 local government jurisdictions, and approximately 4.9 million firms in the private sector of the U.S. economy that could possibly hire an employee in the year after this rule takes effect. While many farms and companies hire no employees in a given year requiring submission of no Forms I-9, DHS assumed that the largest possible universe of employers would be affected by the rule in its first year in effect, or all entities. That means there are a total of about 5.54 million farms, businesses, and governmental entities in the U.S. that must obtain a Form I-9 from their new hires. DHS also assumed that each of the affected firms will incur a small cost to learn about the new form and regulations. The Office of Management and Budget (OMB) approved information collection reporting burden for Form I-9 is an average of 12 minutes per response for learning about the form, completing the form, and assembling and filing the form. Because this training facet would add a few minutes to that time burden to read this rule and compare the new and old Form I-9 lists, DHS estimates that each employer will each need approximately 30 minutes to research the changes made by this rule and learn what an acceptable Form I-9 supporting document is after this rule takes effect. According to the U.S. Department of Labor, Bureau of Labor Statistics quarterly report, “Employer Costs for Employee Compensation," employer compensation costs for all civilian occupations averages $28.11 per hour worked. Therefore, based on 30 minutes per employer for 5.54 million employers, this rule will cost all employers nationwide a total of $77,864,700 to familiarize themselves with the new requirements, switch to the new forms, and retrain personnel. This is, however, a one-time and not a repeating or annual cost. Once the transition to this interim rule and new Form I-9 is complete, DHS anticipates that the costs incurred by employers will be lower than under the existing rule because the modified lists of acceptable forms is expected to reduce confusion. DHS believes that the reduced number of documents that may be presented for verification, simplified design of the Form I-9, and more comprehensive instructions provided with the form, will make the verification process for employers easier than it is now.

\8\ Economic Class of Farms by Market Value of Agricultural Products Sold and Government Payments: 2002 http://www.nass.usda.gov/census/census02/volume1/us/st99_1_003_003.pdf.

\9\ New Quarterly Data from BLS on Business Employment Dynamics by Size of Firm, 2005 http://www.bls.gov/news.release/pdf/cewfs.pdf.

Costs for employees. By reducing the number of documents that are acceptable, this rule will require a newly hired employee to expend some time, effort, and expense in order to obtain an acceptable, unexpired document. For example, a new hire who was able to use an expired passport or U.S. military identification card before this rule rendered those documents unacceptable will now need to obtain a current, unexpired document. Those individuals who could have used an expired document will incur a cost to obtain an alternative document, such as a State-issued driver's license or identification card, which can be presented with their social security card or birth certificate, or a passport card or passport. In order to provide an example that will illustrate this potential impact, DHS has examined what that cost may be. DHS obtained a list of the amounts charged for State-issued driver's licenses or identification cards in every state in the U.S. and the District of Columbia from the American Association of Motor Vehicle Administrators (AAMVA). The average cost to obtain a state-issued photo identification card was found to be $14.40. The U.S. Department of State charges $100 for a passport for someone age 16 and over, and a passport card costs $20. Thus, it assumed for this example, logically, that those individuals who could have used an expired document before this rule will choose the lower-cost option and obtain a state identification card.

According to the U.S. Department of Transportation, Federal Highway Administration, of the 233 million people in the United States who are in the driving age population (age 16 and over), 209 million, or 87 percent, have a State-issued driver's license.\10\ Also, as of 2006, almost 33 million State-issued identification cards were in effect. Therefore, there are approximately 242 million driver's licenses and identification cards held by persons age 16 and over, while the U.S. population of people who are of driving age is 233 million. The issuance of 9 million more State-issued driver's licenses and State-issued identification cards than the driving age population suggests that a very small portion of the working-age population would have neither a State-issued driver's license nor a State-issued identification card. Therefore, it is likely that very few people will be required to obtain a license in order to comply with the new requirements of this rule. On the other hand, a sample of 2000 registered voters in three states performed for a study being conducted by American University (AU) found that roughly 1.2 percent of the people surveyed did not have acceptable photo identification cards for voting purposes.\11\ Assuming that the result from those three states would hold true nationwide, that percentage, while small, is

not trivial due to the annual volume of new hires who must present Form I-9. If only 1.2 percent of the estimated 58 million annual new hires in the United States must obtain a new document, 696,000 people are affected.\12\ As stated above, states charge an average of $14.40 for an identification card. In addition, DHS estimates that expenses for each affected person would also include spending about 4 hours of their personal time to obtain the card and that the worker gives up this amount of time engaging in a leisure activity. According to guidelines used by the U.S. Department of Transportation on the values of travel time, the opportunity cost of leisure time forgone for travel is calculated as 50 percent of wages. Using the employer compensation costs per hour for all civilian occupations of $28.11, the value of leisure per hour is about $14.06. Thus, a person could be required to expend up to $14.40 in cash and $56.20 in opportunity costs, or total costs of $70.60, to obtain a State-issued identification card because of the changes made by this rule. Using the 1.2 percent figure from the AU study, this example results in an aggregate nationwide employee expense for obtaining an acceptable document of $49,137,600.

\10\ United States Department of Transportation, Federal Highway Administration, Highway Statistics 2006, Licensed drivers--Ratio of licensed drivers to population. Available at: http://www.fhwa.dot.gov/policy/ohim/hs06/driver_licensing.htm.

\11\ Robert Pastor, et al., Voter IDs Are Not the Problem: A Survey of Three States, (Center for Democracy and Election Management, American University, Washington, DC , Jan. 9, 2008). http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf.

\12\ U.S. Department of Labor, U.S. Bureau of Labor Statistics, Job Openings and Labor Turnover Survey Available at: http://data.bls.gov/PDQ/outside.jsp?survey=jt.

The cost associated with the information collection burden of the Form I-9 and its instructions is discussed below in the Paperwork Reduction Act section of this rule.

F. Executive Order 13132

This rule would have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Paperwork Reduction Act

This interim rule requires a revision to the Form I-9 (OMB Control Number 1615-0047).

Since this is an interim rule, this information collection has been submitted and approved by OMB for 180 days under the emergency review and clearance procedures covered under the PRA. During the first 60 days, USCIS is requesting comments on this information collection until February 17, 2009. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;
(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
(3) Enhance the quality, utility, and clarity of the information to be collected; and
(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a currently approved information collection.
(2) Title of the Form/Collection: Employment Eligibility Verification.
(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I-9. U.S. Citizenship and Immigration Services.
(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: This figure was derived by multiplying the number of respondents (78,000,000) x frequency of response (1) x hour per response (9 minutes or 0.15 hours). The annual recordkeeping burden is added to the total annual reporting burden that is based on 20,000,000 record keepers at (3 minutes or .05 hours) per filing.
(6) An estimate of the total public burden (in hours) associated with the collection: 12,700,000 annual burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a--CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.2 is amended by:
a. Revising the section heading;
b. Revising the term “eligibility" to read authorization" in the first sentence of paragraphs (a)(3), (b)(1)(i)(B), and (b)(1)(ii)(A);
c. Revising paragraph (b)(1)(v) introductory text;
d. Revising paragraph (b)(1)(v)(A);
e. Revising paragraphs (b)(1)(v)(C)(1), (2), (3), (6), (7), and (8); and by
f. Revising paragraphs (b)(1)(vi)(B) and (C).
The revisions read as follows:

Sec. 274a.2 Verification of identity and employment authorization.

* * * * *
(b) * * *
(1) * * *
(v) The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity. Only unexpired documents are acceptable. The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the Form I-9.
(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment authorization:
(1) A United States passport;
(2) An Alien Registration Receipt Card or Permanent Resident Card (Form I-551);
(3) A foreign passport that contains a temporary I-551 stamp, or temporary I-551 printed notation on a machine-readable immigrant visa;
(4) An Employment Authorization Document which contains a photograph (Form I-766);
(5) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with a Form I-94 or Form I-94A bearing the same name as the passport and containing 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;
(6) A 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.
* * * * *
(C) * * *
(1) A Social Security account number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States;
(2) Certification of Birth issued by the Department of State, Form FS-545;
(3) Certification of Report of Birth issued by the Department of State, Form DS-1350;
* * * * *
(6) United States Citizen Identification Card, Form I-197;
(7) Identification card for use of resident citizen in the United States, Form I-179;
(8) An employment authorization document issued by the Department of Homeland Security.
(vi) * * *
(B) Form I-94 or I-94A indicating temporary evidence of permanent resident status. The individual indicates in section 1 of the Form I-9 that he or she is a lawful permanent resident and the individual:
(1) Presents the arrival portion of Form I-94 or Form I-94A with an unexpired foreign passport containing an unexpired “Temporary I-551" stamp and a photograph of the individual, which is designated for purposes of this section as a receipt for Form I-551; and
(2) Presents the Form I-551 by the expiration date of the “Temporary I-551" stamp or, if the stamp or statement has no expiration date, within one year from the issuance date of the arrival portion of the Form I-94 or Form I-94A; or
(C) Form I-94 or I-94A indicating refugee status. The individual indicates in section 1 of the Form I-9 that he or she is an alien authorized to work and the individual:
(1) Presents the departure portion of Form I-94 or I-94A containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, or a social security account number card that contains no employment restrictions; and
(2) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I-766, or a social security account number card that contains no employment restrictions and a document described under paragraph (b)(1)(v)(B) of this section.
* * * * *

Paul A. Schneider,
Deputy Secretary.

Note: The Form I-9 included as an attachment to this document should not be codified in Title 8 of the Code of Federal Regulations.

[FR Doc. E8-29874 Filed 12-16-08; 8:45 am]

BILLING CODE 9111-97-C

Title 8 of Code of Federal Regulations (CFR 8)

8 CFR PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

Source: 52 FR 16221, May 1, 1987, unless otherwise noted. Duplicated from part 274a at 68 FR 9844, Feb. 28, 2003.

Editorial Note: Nomenclature changes to part 1274a appear at 68 FR 9846, Feb. 28, 2003, and 68 FR 10359, Mar. 5, 2003.

Subpart A—Employer Requirements

§ 1274a.1 Definitions.

For the purpose of this part—

(a) The term *unauthorized alien* means, with respect to employment of an alien at a particular time, that the alien is not at that time either: (1) Lawfully admitted for permanent residence, or (2) authorized to be so employed by this Act or by the Attorney General;

(b) The term *entity* means any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association;

(c) The term *hire* means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and § 1274a.5 of this part, a hire occurs when a person or entity uses a contract, subcontract or exchange entered into, renegotiated or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;

(d) The term *refer for a fee* means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(e) The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, and referring that person to another with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(f) The term *employee* means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

(g) The term *employer* means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term *employer* shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(h) The term *employment* means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections 101 (a)(10) and (a)(15)(D) of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

(i) The term *State employment agency* means any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system;

(j) The term *independent contractor* includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes service s available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and § 1274a.5 of this part;

(k) The term *pattern* or *practice* means regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts;

(l)(1) The term *knowing* includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may *not* be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8612, Mar. 16, 1988; 55 FR 25931, June 25, 1990; 56 FR 41783, Aug. 23, 1991]

§ 1274a.2 Verification of employment eligibility.

(a) *General.* This section states the requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States. For purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802). The Form I–9, Employment Eligibility Verification Form, has been designated by the Service as the form to be used in complying with the requirements of this section. The Form I–9 may be obtained in limited quantities at INS District Offices, or ordered from the Superintendent of Documents, Washington, DC 20402. Employers may electronically generate blank Forms I–9, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under §1274a.2(b) . When copying or printing the Form I–9, the text of the two-sided form may be reproduced by making either double-sided or single-sided copies. Employers need only complete the Form I–9 for individuals who are hired after November 6, 1986 and continue to be employed after May 31, 1987. Employers shall have until September 1, 1987 to complete the Form I–9 for individuals hired from November 7, 1986 through May 31, 1987. Recruiters and referrers for a fee need complete the Form I–9 only for those individuals who are recruited or referred and hired after May 31, 1987. In conjunction with completing the Form I–9, an employer or recruiter or referrer for a fee must examine documents that evidence the identity and employment eligibility of the individual. The employer or recruiter or referrer for a fee and the individual must each complete an attestation on the Form I–9 under penalty of perjury.

(b) *Employment verification requirements* — (1) *Examination of documents and completion of Form I–9.* (i) A person or entity that hires or recruits or refers for a fee an individual for employment must ensure that the individual properly:

(A) Complete section 1—"Employee Information and Verification"—on the Form I–9 at the time of hire; or if an individual is unable to complete the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form to the individual, assist him or her in completing Section 1—"Employee Information and Verification," and have the individual sign or mark the Form in the appropriate place. The preparer or translator must then complete the "Preparer/Translator Certification" portion of the Form I–9; and

(B) Present to the employer or the recruiter or referrer for a fee documentation as set forth in paragraph (b)(1)(v) of this section establishing his or her identity and employment eligibility within the time limits set forth in paragraphs (b)(1)(ii) through (b)(1)(v) of this section.

(ii) Except as provided in paragraph (b)(1)(viii) of this section, an employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, must within three business days of the hire:

(A) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in paragraph (b)(1)(v) of this section and ensure that the documents presented appear to be genuine and to relate to the individual; and

(B) Complete section 2—"Employer Review and Verification"—of the Form I–9.

(iii) An employer who hires an individual for employment for a duration of less than three business days must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section at the time of the hire. An employer may not accept a receipt, as described in paragraph (b)(1)(vi) of this section, in lieu of the required document if the employment is for less than three business days.

(iv) A recruiter or referrer for a fee for employment must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section within three business days of the date the referred individual is hired by the employer. Recruiters and referrers may designate agents to complete the employment verification procedures on their behalf including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy of the Form I–9.

(v) The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity. The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the Form I–9.

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment eligibility:

(1*)* United States passport (unexpired or expired);

(2*)* Alien Registration Receipt Card or Permanent Resident Card, Form I–551;

(3*)* An unexpired foreign passport that contains a temporary I–551 stamp;

(*4*) An unexpired Employment Authorization Document issued by the Immigration And Naturalization Service which contains a photograph, Form I–766; Form I–688, Form I–688A, or Form I–688B;

(5*)* In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so 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 I–94.

(B) The following documents are acceptable to establish identity only:

(1*)* For individuals 16 years of age or older:

(*i*) A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act). If the driver's license or identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

(ii*)* School identification card with a photograph;

(iii*)* Voter's registration card;

(vi*)* U.S. military card or draft record;

(v*)* Identification card issued by federal, state, or local government agencies or entities. If the identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

(vi*)* Military dependent's identification card;

(vii*)* Native American tribal documents;

(viii*)* United States Coast Guard Merchant Mariner Card;

(ix*)* Driver's license issued by a Canadian government authority;

(2*)* For individuals under age 18 who are unable to produce a document listed in paragraph (b)(1)(v)(B)(*1*) of this section, the following documents are acceptable to establish identity only:

(i*)* School record or report card;

(ii*)* Clinic doctor or hospital record;

(*iii)* Daycare or nursery school record.

(*3*) Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (*1*) or (*2*) of this section are exempt from producing one of the enumerated identity documents if:

(*i*) The minor's parent or legal guardian completes on the Form I–9 Section 1—"Employee Information and Verification" and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age 18."

(*ii*) The minor's parent or legal guardian completes on the Form I–9 the "Preparer/Translator certification."

(*iii*) The employer or the recruiter or referrer for a fee writes in Section 2—"Employer Review and Verification" under List B in the space after the words "Document Identification #" the words, "minor under age 18."

(*4*) Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (*1*) or (*2*) of this section, who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term "special placement" for "minor under age 18", and permitting, in addition to a parent or legal guardian, a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment, to fill out and sign in the appropriate section, the Form I–9. For purposes of this section the term *individual with handicaps* means any person who

(*i*) Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

(*ii*) Has a record of such impairment, or

(*iii*) Is regarded as having such impairment.

(C) The following are acceptable documents to establish employment authorization only:

(*1*) A social security number card other than one which has printed on its face "not valid for employment purposes";

(*2*) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(*3*) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(*4*) An original or certified copy of a birth certificate issued by a State, county, municipal authority or outlying possession of the United States bearing an official seal;

(*5*) Native American tribal document;

(*6*) United States Citizen Identification Card, INS Form I–197;

(*7*) Identification card for use of resident citizen in the United States, INS Form I–179;

(*8*) An unexpired employment authorization document issued by the Immigration and Naturalization Service.

(vi) *Special rules for receipts.* Except as provided in paragraph (b)(1)(iii) of this section, unless the individual indicates or the employer or recruiter or referrer for a

fee has actual or constructive knowledge that the individual is not authorized to work, an employer or recruiter or referrer for a fee must accept a receipt for the application for a replacement document or a document described in paragraphs (b)(1)(vi)(B)((*1*) and (b)(1)(vi)(C)((*1*) of this section in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

(A) *Application for a replacement document.* The individual:

(*1*) Is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged;

(*2*) Presents a receipt for the application for the replacement document within the time specified in this section; and

(*3*) Presents the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires; or

(B) *Form I–94 indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I–9 that he or she is a lawful permanent resident and the individual:

(*1*) Presents the arrival portion of Form I–94 containing an unexpired “Temporary I–551” stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I–551; and

(*2*) Presents the Form I–551 by the expiration date of the “Temporary I–551” stamp or, if the stamp has no expiration date, within 1 year from the issuance date of the arrival portion of Form I–94; or

(C) *Form I–94 indicating refugee status.* The individual indicates in section 1 of the Form I–9 that he or she is an alien authorized to work and the individual:

(*1*) Presents the departure portion of Form I–94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I–766, Form I–688B, or a social security account number card that contains no employment restrictions; and

(*2*) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I–766 or Form I–688B, or a social security account number card that contains no employment restrictions, and a document described under paragraph (b)(1)(v)(B) of this section.

(vii) If an individual's employment authorization expires, the employer, recruiter or referrer for a fee must reverify on the Form I–9 to reflect that the individual is still authorized to work in the ——United States—; otherwise the individual may no longer be employed, recruited, or referred. Reverification on the Form I–9 must occur not later than the date work authorization expires. In order to reverify on the Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and to relate to the individual, reverify by noting the document's identification number and expiration date on the Form I–9.

(viii) An employer will not be deemed to have hired an individual for employment if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

(A) An individual is continuing in his or her employment in one of the following situations:

(*1*) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(*2*) An individual is promoted, demoted, or gets a pay raise;

(*3*) An individual is temporarily laid off for lack of work;

(*4*) An individual is on strike or in a labor dispute;

(*5*) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(*6*) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I–9 to the receiving unit;

(*7*) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I–9 where applicable. For this purpose, a related, successor, or reorganized employer includes:

(*i*) The same employer at another location;

(*ii*) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(*iii*) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this subsection, any agent designated to complete and maintain the Form I–9 must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(*8*) An individual is engaged in seasonal employment.

(B) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual expected to resume employment at all times and that the individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis

taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(*1*) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(*2*) The individual in question complied with the employer's established and published policy regarding his or her absence;

(*3*) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(*4*) The former position held by the individual in question has not been taken permanently by another worker;

(*5*) The individual in question has not sought or obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(6*)* The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(7*)* The oral and/or written communication between employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.

(2) *Retention and Inspection of Form I–9.* (i) Form I–9 must be retained by an employer or a recruiter or referrer for a fee for the following time periods:

(A) In the case of an employer, three years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later; or

(B) In the case of a recruiter or referrer for a fee, three years after the date of the hire.

(ii) Any person or entity required to retain Forms I–9 in accordance with this section shall be provided with at least three days notice prior to an inspection of the Forms I–9 by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor. At the time of inspection, Forms I–9 must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If Forms I–9 are kept at another location, the person or entity must inform the officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an INS office. A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I–9 in lieu of presenting the Form I–9 in its original form o r on microfilm or microfiche, as set forth in paragraph (b)(1)(iv) of this section. Any refusal or delay in presentation of the Forms I–9 for inspection is a violation of the retention requirements as set forth in section 274A(b) (3) of the Act. No Subpoena or warrant shall be required for such inspection, but the use of such enforcement tools is not precluded. In addition, if the person or entity has not complied with a request to present the Forms I–9, any Service officer listed in § 287.4 of this chapter may compel production of the Forms I–9 and any other relevant documents by issuing a subpoena. Nothing in this section is intended to limit the Service's subpoena power under section 235(a) of the Act.

(iii) The following standards shall apply to Forms I–9 presented on microfilm or microfiche submitted to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor: Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify i t to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, recruiter or referrer for a fee:

(A) To provide for the processing, storage and maintenance of all microfilm, and

(B) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor, and at the time of the inspection does not present a properly completed Form I–9 for the employee, is in violation of section 274A(a)(1)(B) of the Act and §1274a.2(b)(2).

(3) *Copying of documentation.* An employer, or a recruiter or referrer for a fee may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements of this section. If such a copy is made, it must be retained with the Form I–9. The retention requirements in paragraph (b)(2) of this section do not

apply to the photocopies. The copying of any such document and retention of the copy does not relieve the employer from the requirement to fully complete section 2 of the Form I–9. An employer, recruiter or referrer for a fee should not, however, copy the documents only of individuals of certain national origins or citizenship statuses. To do so may violate section 274B of the Act.

(4) *Limitation on use of Form I–9.* Any information contained in or appended to the Form I–9, including copies of documents listed in paragraph (c) of this section used to verify an individual's identity or employment eligibility, may be used only for enforcement of the Act and sections 1001, 1028, 1546, or 1621 of title 18, United States Code.

(c) *Employment verification requirements in the case of hiring an individual who was previously employed.* (1) When an employer hires an individual whom that person or entity has previously employed, if the employer has previously completed the Form I–9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the employer may (in lieu of completing a new Form I–9) inspect the previously completed Form I–9 and:

(i) If upon inspection of the Form I–9, the employer determines that the Form I–9 relates to the individual and that the individual is still eligible to work, that previously executed Form I–9 is sufficient for purposes of section 274A(b) of the Act if the individual is hired within three years of the date of the initial execution of the Form I–9 and the employer updates the Form I–9 to reflect the date of rehire; or

(ii) If upon inspection of the Form I–9, the employer determines that the individual's employment authorization has expired, the employer must reverify on the Form I–9 in accordance with paragraph (b)(1)(vii); otherwise the individual may no longer be employed.

(2) For purposes of retention of the Form I–9 by an employer for a previously employed individual hired pursuant to paragraph (c)(1) of this section, the employer shall retain the Form I–9 for a period of three years commencing from the date of the initial execution of the Form I–9 or one year after the individual's employment is terminated, whichever is later.

(d) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred.* (1) When a recruiter or referrer for a fee refers an individual for whom that recruiter or referrer for a fee has previously completed a Form I–9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the recruiter or referrer may (in lieu of completing a new Form I–9) inspect the previously completed Form I–9 and:

(i) If upon inspection of the Form I–9, the recruiter or referrer for a fee determines that the Form I–9 relates to the individual and that the individual is still eligible to work, that previously executed Form I–9 is sufficient for purposes of section 274A(b) of the Act if the individual is referred within three years of the date of the initial execution of the Form I–9 and the recruiter or referrer for a fee updates the Form I–9 to reflect the date of rehire; or

(ii) If upon inspection of the Form I–9, the recruiter or referrer determines that the individual's employment authorization has expired, the recruiter or referrer for a fee must reverify on the Form I–9 in accordance with paragraph (b)(1)(vii) of this section; otherwise the individual may no longer be recruited or referred.

(2) For purposes of retention of the Form I–9 by a recruiter or referrer for a previously recruited or referred individual pursuant to paragraph (d)(1) of this section, the recruiter or referrer shall retain the Form I–9 for a period of three years from the date of the rehire.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8612, Mar. 16, 1988; 55 FR 25932, June 25, 1990; 56 FR 41784–41786, Aug. 23, 1991; 58 FR 48780, Sept. 20, 1993; 61 FR 46537, Sept. 4, 1996; 61 FR 52236, Oct. 7, 1996; 62 FR 51005, Sept. 30, 1997; 64 FR 6189, Feb. 9, 1999; 64 FR 11533, Mar. 9, 1999]

§ 1274a.3 Continuing employment of unauthorized aliens.

An employer who continues the employment of an employee hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien with respect to that employment, is in violation of section 274A(a)(2) of the Act.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988]

§ 1274a.4 Good faith defense.

An employer or a recruiter or referrer for a fee for employment who shows good faith compliance with the employment verification requirements of § 1274a.2(b) of this part shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

§ 1274a.5 Use of labor through contract.
Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

[55 FR 25934, June 25, 1990]

§ 1274a.6 State employment agencies.

(a) *General.* Pursuant to sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 1274a.1 of this part may, but is not required to, verify identity and employment eligibility of individuals referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of § 1274a.2(b) of this part provided that the individual may not present receipts in

lieu of documents in order to complete the verification process as otherwise permitted by §1274a.2(b)(1)(vi) of this part; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued pursuant to paragraph (c) of this section.

(b) Compliance with the provisions of section 274A of the Act. A state employment agency which chooses to verify employment eligibility of individuals pursuant to § 1274a.2(b) of this part shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.* (1) A state employment agency which chooses to verify employment eligibility pursuant to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, personally by an agency official, or by mail, so that it will be received by the employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I–9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance pursuant to paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;

(iv) The name and title of the referring state employment agency official; and

(v) The telephone number and address of the state employment agency.

(3) A state employment agency shall not be required to verify employment eligibility or to issue a certification to an employer to whom the agency referred an individual if the individual is hired for a period of employment not to exceed 3 days in duration. Should a state agency choose to verify employment eligibility and to issue a certification to an employer relating to an individual who is hired for a period of employment not to exceed 3 days in duration, it must verify employment eligibility and issue certifications relating to *all* such individuals. Should a state employment agency choose not to verify employment eligibility or issue certifications to employers who hire, for a period not to exceed 3 days in duration, agency-referred individuals, the agency shall notify employers that, as a matter of policy, it does not perform verifications for individuals hired for that length of time, and that the employers must complete the identity and employment eligibility requirements pursuant to § 1274a.2(b) of this part. Such notification may be incorporated into the job order or other referral form utilized by the state employment agency as appropriate.

(4) An employer to whom a state employment agency issues a certification relating to an individual referred by the agency and hired by the employer, shall be deemed to have complied with the verification requirements of § 1274a.2(b) of this part provided that the employer:

(i) Reviews the identifying information contained in the certification to ensure that it pertains to the individual hired;

(ii) Observes the signing of the certification by the individual at the time of its receipt by the employer as provided for in paragraph (d)(13) of this section;

(iii) Complies with the provisions of §1274a.2(b)(1)(vii) of this part by either:

(A) Updating the state employment agency certification in lieu of Form I–9, upon expiration of the employment authorization date, if any, which was noted on the certification issued by the state employment agency pursuant to paragraph (d)(11) of this section; or

(B) By no longer employing an individual upon expiration of his or her employment authorization date noted on the certification;

(iv) Retains the certification in the same manner prescribed for Form I–9 in §1274a.2(b)(2) of this part, to wit, three years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later; and

(v) Makes it available for inspection to officers of the Service or the Department of Labor, pursuant to the provisions of section 274A(b)(3) of the Act, and §1274a.2(b)(2) of this part.

(5) Failure by an employer to comply with the provisions of paragraph (c)(4)(iii) of this section shall constitute a violation of section 274A(a)(2) of the Act and shall subject the employer to the penalties contained in section 274A(e)(4) of the Act, and § 1274a.10 of this part.

(d) *Standards for state employment agency certifications.* All certifications issued by a state employment agency pursuant to paragraph (c) of this section shall conform to the following standards. They must:

(1) Be issued on official agency letterhead;

(2) Be signed by an appropriately designated official of the agency;

(3) Bear a date of issuance;

(4) Contain the employer's name and address;

(5) State the name and date of birth of the individual referred;

(6) Identify the position or type of employment for which the individual is referred;

(7) Bear a job order number relating to the position or type of employment for which the individual is referred;

(8) Identify the document or documents presented by the individual to the state employment agency for the purposes of identity and employment eligibility verification;

(9) State the identifying number or numbers of the document or documents described in paragraph (d)(8) of this section;

(10) Certify that the agency has complied with the requirements of section 274A(b) of the Act concerning verification of the identity and employment eligibility of the individual referred, and has determined that, to the best of the agency's knowledge, the individual is authorized to work in the United States;

(11) Clearly state any restrictions, conditions, expiration dates or other limitations which relate to the individual's employment eligibility in the United States, or contain an affirmative statement that the employment authorization of the referred individual is not restricted;

(12) State that the employer is not required to verify the individual's identity or employment eligibility, but must retain the certification in lieu of Form I–9;

(13) Contain a space or a line for the signature of the referred individual, requiring the individual under penalty of perjury to sign his or her name before the employer at the time of receipt of the certification by the employer; and

(14) State that counterfeiting, falsification, unauthorized issuance or alteration of the certification constitutes a violation of federal law pursuant to title 18, U.S.C. 1546.

(e) *Retention of Form I–9 by state employment agencies.* A Form I–9 utilized by a state employment agency in verifying the identity and employment eligibility of an individual pursuant to § 1274a.2(b) of this part must be retained by a state employment agency for a period of three years from the date that the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I–9 either in its original form, or on microfilm or microfiche.

(f) *Retention of state employment agency certifications.* A certification issued by a state employment agency pursuant to this section shall be retained:

(1) By a state employment agency, for a period of three years from the date that the individual was last referred by the agency and hired by an employer, and in a manner to be determined by the agency which will enable the prompt retrieval of the information contained on the original certification for comparison with the relating Form I–9;

(2) By the employer, in the original form, and in the same manner and location as the employer has designated for retention of Forms I–9, and for the period of time provided in paragraph (c)(4)(iv) of this section.

(g) *State employment agency verification requirements in the case of an individual who was previously referred and certified.* When a state employment agency refers an individual for whom the verification requirements have been previously complied with and a Form I–9 completed, the agency shall inspect the previously completed Form I–9:

(1) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 need be completed prior to issuance of a new certification *provided* that the individual is referred by the agency within 3 years of the execution of the initial Form I–9.

(2) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual but that the individual does not appear to be authorized to be employed in the United States based on restrictions, expiration dates or other conditions annotated on the Form I–9, the agency shall not issue a certification unless the agency follows the updating procedures pursuant to §1274a.2(b)(1)(vii) of this part; otherwise the individual may no longer be referred for employment by the state employment agency.

(3) For the purposes of retention of the Form I–9 by a state employment agency pursuant to paragraph (e) of this section, for an individual previously referred and certified, the state employment agency shall retain the Form for a period of 3 years from the date that the individual is last referred and hired.

(h) *Employer verification requirements in the case of an individual who was previously referred and certified.* When an employer rehires an individual for whom the verification and certification requirements have been previously complied with by a state employment agency, the employer shall inspect the previously issued certification.

(1) If, upon inspection of the certification, the employer determines that the certification pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 or certification need be completed *provided* that the individual is rehired by the employer within 3 years of the issuance of the initial certification, and that the employer follows the same procedures for the certification which pertain to Form I–9, as specified in §1274a.2(c)(1)(i) of this part.

(2) If, upon inspection of the certification, the employer determines that the certification pertains to the individual but that the certification reflects restrictions,

expiration dates or other conditions which indicate that the individual no longer appears authorized to be employed in the United States, the employer shall verify that the individual remains authorized to be employed and shall follow the updating procedures for the certification which pertain to Form I–9, as specified in §1274a.2(c)(1)(ii) of this part; otherwise the individual may no longer be employed.

(3) For the purposes of retention of the certification by an employer pursuant to this paragraph for an individual previously referred and certified by a state employment agency and rehired by the employer, the employer shall retain the certification for a period of 3 years after the date that the individual is last hired, or one year after the date the individual's employment is terminated, whichever is later.

[52 FR 43053, Nov. 9, 1987]

§ 1274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

(a) The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in §1274a.2(b)(1)(viii)), except those individuals described in section 274a.2 (b)(1)(viii)(A)(7)(iii) and (b)(1)(viii)(A)(8).

(b) For purposes of this section, an employee who was hired prior to November 7, 1986 shall lose his or her pre-enactment status if the employee:

(1) Quits; or

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment; or

(3) Is excluded or deported from the United States or departs the United States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in §1274a.2(b)(1)(viii) .

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988; 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991]

§ 1274a.8 Prohibition of indemnity bonds.

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, and $1,100 for each violation occurring on or after September 29, 1999, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

[52 FR 16221, May 1, 1987, as amended at 64 FR 47101, Aug. 30, 1999]

§ 1274a.9 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific a ct or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) Investigation. The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) Notice of Intent to Fine. The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I–763. Service of this Notice shall be accomplished pursuant to part 103 of 8 CFR chapter I. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in §242.1 of 8 CFR chapter I with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an Administrative Law Judge pursuant to 5 U.S.C. 554–557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(2) [Reserved]

(e) *Request for Hearing Before an Administrative Law Judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the thirty day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, five days shall be added to the prescribed thirty day period. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

(f) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within thirty days of the day of service of the Notice of Intent to Fine (thirty-five days if served by ordinary mail), the INS shall issue a final order from which there is no appeal.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988; 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991; 61 FR 52236, Oct. 7, 1996]

§ 1274a.10 Penalties.

(a) Criminal penalties. Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of the Act shall be fined not more than $3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an administrative law judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an administrative law judge to have knowingly hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom the offense occurred before September 29, 1999, and not less than $275 and not exceeding $2,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after September 29, 1999.

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom the second offense occurred before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each unauthorized alien with respect to whom the second offense occurred on or after September 29, 1999; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before September 29, 1999, and not less than $3,300 and not exceeding $11,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after September 29, 1999; and

(iii) To comply with the requirements of section 274a.2(b) of this part, and to take such other remedial action as is appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 1274a.2(b) , shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A(a)(1)(A) or (2) of the Act, the Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

[52 FR 16221, May 1, 1987, as amended at 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991; 64 FR 47101, Aug. 30, 1999]

§ 1274a.11 [Reserved]

Subpart B—Employment Authorization

§ 1274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3) through (a)(8) or (a)(10) through (a)(16) of this section, and who seeks to be employed in the United States, must apply to the Service for a document evidencing such employment.

(1) An alien who is a lawful permanent resident (with or without conditions pursuant to section 216 of the Act), as evidenced by Form I–551 issued by the Service. An expiration date on the Form I–551 reflects only that the card must be renewed, not that the bearer's work authorization has expired;

(2) An alien admitted to the United States as a lawful temporary resident pursuant to sections 245A or 210 of the Act, as evidenced by an employment authorization document issued by the Service;

(3) An alien admitted to the United States as a refugee pursuant to section 207 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(4) An alien paroled into the United States as a refugee for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(5) An alien granted asylum under section 208 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(6) An alien admitted to the United States as a nonimmigrant fiancé or fiancée pursuant to section 101(a)(15)(K)(i) of the Act, or an alien admitted as a child of such alien, for the period of admission in that status, as evidenced by an employment authorization document issued by the Service;

(7) An alien admitted as a parent (N–8) or dependent child (N–9) of an alien granted permanent residence under section 101(a)(27)(I) of the Act, as evidenced by an employment authorization document issued by the Service;

(8) An alien admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories, as evidenced by an employment authorization document issued by the Service;

(9) Any alien admitted as a nonimmigrant spouse pursuant to section 101(a)(15)(K)(ii) of the Act, or an alien admitted as a child of such alien, for the period of admission in that status, as evidenced by an employment authorization document, with an expiration date issued by the Service;

(10) An alien granted withholding of deportation or removal for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(11) An alien who has been granted extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State. Employment is authorized for the period of time in that status as evidenced by an employment authorization document issued by the Service;

(12) An alien granted Temporary Protected Status under section 244 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

(13) An alien granted voluntary departure by the Attorney General under the Family Unity Program established by section 301 of the Immigration Act of 1990, as evidenced by an employment authorization document issued by the Service;

(14) An alien granted Family Unity benefits under section 1504 of the Legal Immigrant Family Equity (LIFE) Act Amendments, Public Law 106–554, and the provisions of 8 CFR part 245a , Subpart C of this chapter, as evidenced by an employment authorization document issued by the Service; or

(15) Any alien in V nonimmigrant status as defined in section 101(a)(15)(V) of the Act and 8 CFR 214.15 . An employment authorization document issued under this paragraph will be valid for a period equal to the alien's period of authorized admission as a V nonimmigrant and, in any case, may not exceed 2 years;

(16) An alien authorized to be admitted to or remain in the United States as a nonimmigrant alien victim of a severe form of trafficking in persons under section

101(a)(15)(T)(i) of the Act. Employment authorization granted under this paragraph shall expire upon the expiration of the underlying T–1 nonimmigrant status granted by the Service.

(b) *Aliens authorized for employment with a specific employer incident to status.* The following classes of nonimmigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification. An alien in one of these classes is not issued an employment authorization document by the Service:

(1) A foreign government official (A–1 or A–2), pursuant to § 214.2(a) of 8 CFR chapter I. An alien in this status may be employed only by the foreign government entity;

(2) An employee of a foreign government official (A–3), pursuant to § 214.2(a) of 8 CFR chapter I. An alien in this status may be employed only by the foreign government official;

(3) A foreign government official in transit (C–2 or C–3), pursuant to § 214.2(c) of 8 CFR chapter I. An alien in this status may be employed only by the foreign government entity;

(4) [Reserved]

(5) A nonimmigrant treaty trader (E–1) or treaty investor (E–2), pursuant to § 214.2(e) of 8 CFR chapter I. An alien in this status may be employed only by the treaty-qualifying company through which the alien attained the status. Employment authorization does not extend to the dependents of the principal treaty trader or treaty investor (also designated “E–1” or “E–2”), other than those specified in paragraph (c)(2) of this section;

(6) A nonimmigrant (F–1) student who is in valid nonimmigrant student status and pursuant to 8 CFR 214.2(f) is seeking:

(i) On-campus employment for not more than twenty hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary;

(ii) [Reserved]

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in a Service approved institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I–20. No Service endorsement is necessary.

(7) A representative of an international organization (G–1, G–2, G–3, or G–4), pursuant to § 214.2(g) of 8 CFR chapter I. An alien in this status may be employed only by the foreign government entity or the international organization;

(8) A personal employee of an official or representative of an international organization (G–5), pursuant to § 214.2(g) of 8 CFR chapter I. An alien in this status may be employed only by the official or representative of the international organization;

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of 8 CFR chapter I. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 to petition for H–2B classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

(10) An information media representative (I), pursuant to § 214.2(i) of 8 CFR chapter I. An alien in this status may be employed only for the sponsoring foreign news agency or bureau. Employment authorization does not extend to the dependents of an information media representative (also designated “I”);

(11) An exchange visitor (J–1), pursuant to § 214.2(j) of 8 CFR chapter I and 22 CFR part 62 . An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the Department of State as set forth in the Form DS–2019, Certificate of Eligibility, issued by the program sponsor;

(12) An intra-company transferee (L–1), pursuant to §214.2(1) of 8 CFR chapter I. An alien in this status may be employed only by the petitioner through whom the status was obtained;

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to § 214.2(o) of 8 CFR chapter I. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 petition for O nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), pursuant to § 214.2(p) of 8 CFR chapter I. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue

for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for P–1 nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

(15) An international cultural exchange visitor (Q–1), according to § 214.2(q)(1) of 8 CFR chapter I. An alien may only be employed by the petitioner through whom the status was obtained;

(16) An alien having a religious occupation, pursuant to § 214.2(r) of 8 CFR chapter I. An alien in this status may be employed only by the religious organization through whom the status was obtained;

(17) Officers and personnel of the armed services of nations of the North Atlantic Treaty Organization, and representatives, officials, and staff employees of NATO (NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 and NATO–6), pursuant to § 214.2(o) of 8 CFR chapter I. An alien in this status may be employed only by NATO;

(18) An attendant, servant or personal employee (NATO–7) of an alien admitted as a NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6, pursuant to § 214.2(o) of 8 CFR chapter I. An alien admitted under this classification may be employed only by the NATO alien through whom the status was obtained;

(19) A nonimmigrant pursuant to section 214(e) of the Act. An alien in this status must be engaged in business activities at a professional level in accordance with the provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA); or

(20) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(16), and (b)(19) of this section whose status has expired but who has filed a timely application for an extension of such stay pursuant to §§ 214.2 or 214.6 of 8 CFR chapter I. These aliens are authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay. Such authorization shall be subject to any conditions and limitations noted on the initial authorization. However, if the district director or service center director adjudicates the application prior to the expiration of this 240 day period and denies the application for extension of stay, the employment authorization under this paragraph shall automatically terminate upon notification of the denial decision.

(c) *Aliens who must apply for employment authorization.* An alien within a class of aliens described in this section must apply for work authorization. If authorized, such an alien may accept employment subject to any restrictions stated in the regulations or cited on the employment authorization document:

(1) An alien spouse or unmarried dependent child; son or daughter of a foreign government official (A–1 or A–2) pursuant to § 214.2(a)(2) of 8 CFR chapter I and who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

(2) An alien spouse or unmarried dependent son or daughter of an alien employee of the Coordination Council for North American Affairs (E–1) pursuant to § 214.2(e) of 8 CFR chapter I;

(3) A nonimmigrant (F–1) student who:

(i) Is seeking employment for purposes of optional practical training pursuant to 8 CFR 214.2(f) , provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents an I–20 ID endorsed by the designated school official;

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. The F–1 student must also present a Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I–20 ID and Form I–538 (for non-SEVIS schools), or SEVIS Form I–20 with employment page completed by the DSO certifying eligibility, and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization. (9)(ii)(C) and has filed the Form I–20, Form I–538 and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization and evidence the fact that the student has attempted to find employment under 8 CFR 214.2(f)(9)(ii)(B) ;

(4) An alien spouse or unmarried dependent child; son or daughter of an officer of, representative to, or employee of an international organization (G–1, G–3 or G–4) pursuant to § 214.2(g) of 8 CFR chapter I who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

(5) An alien spouse or minor child of an exchange visitor (J–2) pursuant to § 214.2(j) of 8 CFR chapter I;

(6) A nonimmigrant (M–1) student seeking employment for practical training pursuant to 8 CFR 214.2(m) following completion of studies. The alien may be employed only in an occupation or vocation directly related to his or her course of study as recommended by the endorsement of the designated school official on the I–20 ID;

(7) A dependent of an alien classified as NATO–1 through NATO–7 pursuant to § 214.2(n) of 8 CFR chapter I;

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 1208, whose application:

(i) Has not been decided, and who is eligible to apply for employment authorization under § 1208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 1208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date; or

(ii) Has been recommended for approval, but who has not yet received a grant of asylum or withholding or deportation or removal;

(9) An alien who has filed an application for adjustment of status to lawful permanent resident pursuant to part 245 of this chapter. Except as provided in §§ 1245.13(j) and 1245.15(n) of this chapter, employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. For purposes of section 245(c)(8) of the Act, an alien will not be deemed to be an "unauthorized alien" as defined in section 274A(h)(3) of the Act while his or her properly filed Form I–485 application is pending final adjudication, if the alien has otherwise obtained permission from the Service pursuant to 8 CFR 274a.12 to engage in employment, or if the alien had been granted employment authorization prior to the filing of the adjustment application and such authorization does not expire during the pendency of the adjustment application. Upon meeting these conditions, the adjustment applicant need not file an application for employment authorization to continue employment during the period described in the preceding sentence;

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the Act, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Pub. L. 104–208 (110 Stat. 3009–625) (as amended by the Nicaraguan Adjustment and Central American Relief Act (NACARA)), title II of Pub. L. 105–100 (111 Stat. 2160, 2193) and whose properly filed application has been accepted by the Service or EOIR . Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(11) An alien paroled into the United States temporarily for emergency reasons or reasons deemed strictly in the public interest pursuant to § 212.5 of this chapter;

(12)–(13) [Reserved]

(14) An alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment;

(15) [Reserved]

(16) Any alien who has filed an application for creation of record of lawful admission for permanent residence pursuant to part 1249 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specific date;

(17) A nonimmigrant visitor for business (B–1) who:

(i) Is a personal or domestic servant who is accompanying or following to join an employer who seeks admission into, or is already in, the United States as a nonimmigrant defined under sections 101(a)(15)(B) , (E) , (F) , (H) , (I) , (J) , (L) or section 214(e) of the Act. The personal or domestic servant shall have a residence abroad which he or she has no intention of abandoning and shall demonstrate at least one year's experience as a personal or domestic servant. The nonimmigrant's employer shall demonstrate that the employer/employee relationship has existed for at least one year prior to the employer's admission to the United States; or, if the employer/employee relationship existed for less than one year, that the employer has regularly employed (either year-round or seasonally) personal or domestic servants over a period of several years preceding the employer's admission to the United States;

(ii) Is a domestic servant of a United States citizen accompanying or following to join his or her United States citizen employer who has a permanent home or is stationed in a foreign country, and who is visiting temporarily in the United States. The employer/employee relationship shall have existed prior to the commencement of the employer's visit to the United States; or

(iii) Is an employee of a foreign airline engaged in international transportation of passengers freight, whose position with the foreign airline would otherwise entitle the employee to classification under section 101(a)(15)(E)(i) of the Immigration and Nationality Act, and who is precluded from such classification solely because the employee is not a national of the country of the airline's nationality or because there is no treaty of commerce and navigation in effect between the United States and the country of the airline's nationality.

(18) An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest. Additional factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and

(iii) The anticipated length of time before the alien can be removed from the United States.

(19) An alien applying for Temporary Protected Status pursuant to section 244 of the Act shall apply for employment authorization only in accordance with the procedures set forth in part 244 of this chapter.

(20) Any alien who has filed a completed legalization application pursuant to section 210 of the Act (and part 210 of 8 CFR chapter I). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

(21) A principal nonimmigrant witness or informant in S classification, and qualified dependent family members.

(22) Any alien who has filed a completed legalization application pursuant to section 245A of the Act (and part 245a of 8 CFR chapter I). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

(23) An Irish peace process cultural and training program visitor (Q–2), pursuant to § 214.2(q)(15) of 8 CFR chapter I and 22 CFR 41.57 and 22 CFR part 139. An alien in this status may only accept employment with the employer listed on the Certification Letter issued by the DOS' Program Administrator.

(24) An alien who has filed an application for adjustment pursuant to section 1104 of the LIFE Act, Public Law 106–553, and the provisions of 8 CFR part 245a , Subpart B of this chapter. Employment authorization shall be granted in increments not exceeding 1 year during the period that the application is pending (including any period when an administrative appeal is pending) and shall expire on a specific date.

(25) An immediate family member of a T–1 victim of a severe form of trafficking in persons designated as a T–2, T–3 or T–4 nonimmigrant pursuant to § 214.11 of this chapter. Aliens in this status shall only be authorized to work for the duration of their T nonimmigrant status.

(d) *Basic criteria to establish economic necessity.* Title 45—Public Welfare, Poverty Guidelines, 45 CFR 1060.2 should be used as the basic criteria to establish eligibility for employment authorization when the alien's economic necessity is identified as a factor. The alien shall submit an application for employment authorization listing his or her assets, income, and expenses as evidence of his or her economic need to work. Permission to work granted on the basis of the alien's application for employment authorization may be revoked under § 1274a.14 of this chapter upon a showing that the information contained in the statement was not true and correct.

[52 FR 16221, May 1, 1987]

Editorial Note: For Federal Register citations affecting § 1274a.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under § 1274a.12(a) (3)–(8) and (10)–(13) must file an Application for Employment Authorization (Form I–765) in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under § 1274a.12(c) of this part, except for those who may apply under § 1274a.12(c)(8) , shall file a Form I–765 with the director having jurisdiction over applicant's residence, or the director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate. The approval of applications filed under § 1274a.12(c) of this part, except for § 1274a.12(c)(8) , shall be within the discretion of the director or such other officer as the Commissioner may designate. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I–765.

(2) An initial Application for Employment Authorization (Form I–765) for asylum applicants under 1274a.12(c)(8) of this part shall be filed in accordance with instructions on or attached to Form I–765 with the appropriate Service Center or with such other Service office as the Commissioner may designate. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been filed in accordance with §§ 208.3 and 208.4 of this chapter. An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with § 208.7 of this chapter. An application for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, as provided in § 208.7 of this chapter, shall be filed, with fee or application for waiver of such fee, in accordance with the instructions on or attached to Form I–765 with the appropriate Service Center or with such other Service office as the Commissioner may designate.

(b) *Approval of application.* If the application is granted, the alien shall be notified of the decision and issued an INS employment authorization document valid for a specific period and subject to any terms and conditions as noted.

(c) *Denial of application.* If the application is denied, the applicant shall be notified in writing of the decision and the reasons for the denial. There shall be no appeal from the denial of the application.

(d) *Interim employment authorization.* The district director shall adjudicate the application within 90 days from the date of receipt of the application by the INS, except in the case of an initial application for employment authorization under § 1274a.12(c)(8) , which is governed by paragraph (a)(2) of this section, and § 1274a.12(c)(9) insofar as it is governed by §§ 245.13(j) and 245.15(n**)** of this chapter. Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days. Such authorization

shall be subject to any conditions noted on the employment authorization document. However, if the director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section shall automatically terminate as of the date of the director's adjudication and denial.

[52 FR 16221, May 1, 1987, as amended at 55 FR 25937, June 25, 1990; 56 FR 41787, Aug. 23, 1991; 59 FR 33905, July 1, 1994; 59 FR 62303, Dec. 5, 1994; 60 FR 21976, May 4, 1995; 63 FR 39121, July 21, 1998; 64 FR 25773, May 12, 1999; 65 FR 15846, Mar. 24, 2000]

§ 1274a.14 Termination of employment authorization.

(a) *Automatic termination of employment authorization.* (1) Employment authorization granted under § 1274a.12(c) of this chapter shall automatically terminate upon the occurrence of one of the following events:

(i) The expiration date specified by the Service on the employment authorization document is reached;

(ii) Exclusion or deportation proceedings are instituted (however, this shall not preclude the authorization of employment pursuant to § 1274a.12(c) of this part where appropriate); or

(iii) The alien is granted voluntary departure.

(2) Termination of employment authorization pursuant to this paragraph does not require the service of a notice of intent to revoke; employment authorization terminates upon the occurrence of any event enumerated in paragraph (a)(1) of this section.

However, automatic revocation under this section does not preclude reapplication for employment authorization under § 274.12(c) of this part.

(b) *Revocation of employment authorization* —(1) *Basis for revocation of employment authorization.* Employment authorization granted under § 1274a.12(c) of this chapter may be revoked by the district director:

(i) Prior to the expiration date, when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown; or

(ii) Upon a showing that the information contained in the application is not true and correct.

(2) *Notice of intent to revoke employment authorization.* When a district director determines that employment authorization should be revoked prior to the expiration date specified by the Service, he or she shall serve written notice of intent to revoke the employment authorization. The notice will cite the reasons indicating that revocation is warranted. The alien will be granted a period of fifteen days from the date of service of the notice within which to submit countervailing evidence. The decision by the district director shall be final and no appeal shall lie from the decision to revoke the authorization.

(c) *Automatic termination of temporary employment authorization granted prior to June 1, 1987.* (1) Temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 274a.12(c) (§109.1(b) contained in the 8 CFR edition revised as of January 1, 1987), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on December 31, 1996, whichever is earlier. Automatic termination of temporary employment authorization does not preclude a subsequent application for temporary employment authorization.

(2) A document issued by the Service prior to June 1, 1987, that authorized temporary employment authorization for any period beyond December 31, 1996, is null and void pursuant to paragraph (c)(1) of this section. The alien shall be issued a new employment authorization document upon application to the Service if the alien is eligible for temporary employment authorization pursuant to 274A.12(c).

(3) No notice of intent to revoke is necessary for the automatic termination of temporary employment authorization pursuant to this part.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8614, Mar. 16, 1988; 53 FR 20087, June 1, 1988; 61 FR 46537, Sept. 4, 1996]

M-274
Handbook
for Employers

Handbook for Employers

Instructions for Completing the Form I-9
(Employment Eligibility Verification Form)
M-274 (Rev. 11/01/2007) N

Part One
Why Employers Must Verify Employment Eligibility of New Employees

In 1986, Congress reformed U.S. immigration laws. These reforms, the result of a bipartisan effort, preserved the tradition of legal immigration while seeking to close the door to illegal entry. The employer sanctions provisions, found in Section 274A of the Immigration and Nationality Act, were added by the Immigration Reform and Control Act of 1986 (IRCA). These provisions further changed with the passage of the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. References to “the Act” in this Handbook refer to the Immigration and Nationality Act (INA), as amended.

Employment is often the magnet that attracts individuals to reside in the United States illegally. The purpose of the employer sanctions law is to remove this magnet by requiring employers to hire only individuals who may legally work here: citizens and nationals of the United States, lawful permanent residents, and aliens authorized to work. To comply with the law, you must verify the identity and employment eligibility of each person you hire, complete and retain a Form I-9 for each employee, and refrain from discriminating against individuals on the basis of national origin or citizenship. (See Part Four for more information on unlawful discrimination.)

The Form I-9 helps employers to verify individuals who are authorized to work in the United States. You should complete a Form I-9 for every new employee you hire after November 6, 1986.

This Handbook will explain how to properly complete the Form I-9, and answer frequently asked questions about the law as it relates to the Form I-9.

The Homeland Security Act

The Homeland Security Act of 2002 created an executive department combining numerous federal agencies with a mission dedicated to homeland security. On March 1, 2003, the authorities of the former INS were transferred to three new agencies in the Department of Homeland Security: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). The two DHS immigration components most involved with the matters discussed in this Handbook are USCIS and ICE. USCIS is responsible for most documentation of alien work authorization, for the Form I-9 itself, and for the E-Verify employment eligibility verification program. ICE is responsible for enforcement of the penalty provisions of section 274A of the Act, and for other immigration enforcement within the United States.

Under the Homeland Security Act, the Department of Justice retained certain important responsibilities related to the Form I-9 as well. In particular, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in the Civil Rights Division is responsible for enforcement of the anti-discrimination provisions in section 274B of the Act, while the Executive Office for Immigration Review (EOIR) is responsible for the administrative adjudication of cases under sections 274A, 274B, and 274C (civil document fraud) of the INA.

Part Two
Completing Form I-9

You must complete the Form I-9 every time you hire any person to perform labor or services in return for wages or other remuneration. This requirement applies to everyone hired after November 6, 1986.

Ensure that the employee fully completes Section 1 of the Form I-9 at the time of the hire - when the employee begins work. Review the employee’s document(s) and fully complete Section 2 of the Form I-9 within 3 business days of the first day of work.

If you hire a person for less than 3 business days, Sections 1 and 2 of the Form I-9 must be fully completed when the employee begins work.

You DO NOT need to complete a Form I-9 for persons who are:

1. Hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;

2. Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;

3. Independent contractors; or

4. Providing labor to you who are employed by a contractor providing contract services (e.g., employee leasing or temporary agencies).

5. Not physically working on U.S. soil.

NOTE: You cannot contract for the labor of an alien if you know the alien is not authorized to work in the United States.

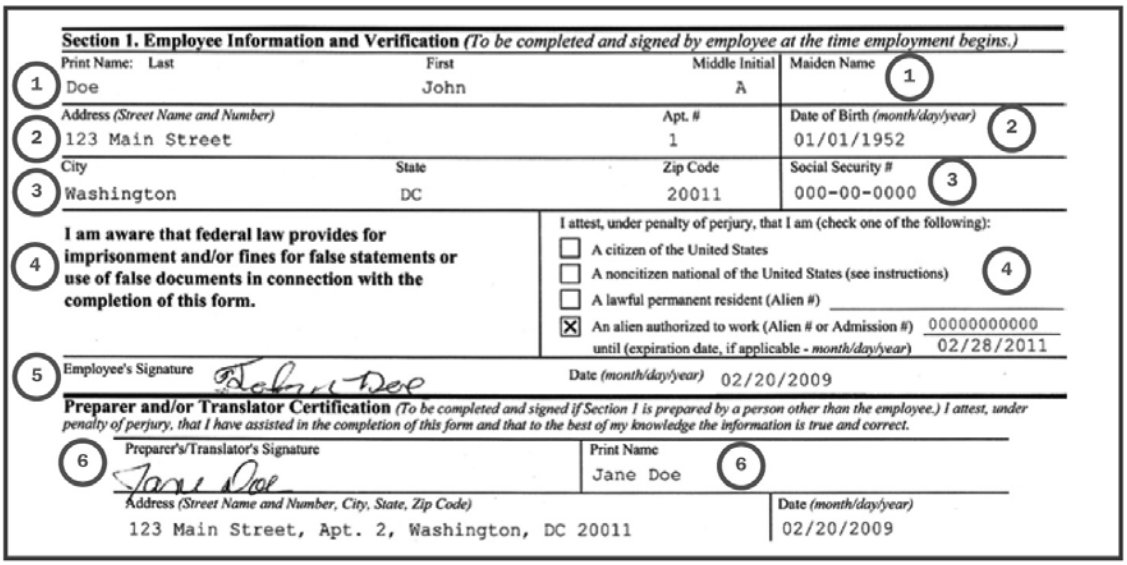
Completing the Form I-9
Section 1

Have the employee complete Section 1 at the time of the hire (when he or she begins to work) by filling in the correct information and signing and dating the form. Ensure that the employee prints the information clearly.

If the employee cannot complete Section 1 without assistance or if he or she needs the Form I-9 translated, someone may assist him or her. The preparer or translator must read the form to the employee, assist him or her in completing Section 1, and have the employee sign or mark the form in the appropriate place. The preparer or translator must then complete the Preparer/ Translator Certification block on the Form I-9.

You are responsible for reviewing and ensuring that your employee fully and properly completes Section 1.

NOTE: Providing a Social Security number on the Form I-9 is voluntary for all employees unless you are an employer participating in the USCIS E-Verify Program, which requires an employee's Social Security number for employment eligibility verification. You may not, however, ask an employee to provide you a specific document with his or her Social Security number on it. To do so may constitute unlawful discrimination. For more information on the E-Verify Program, see Part Six. For more information on unlawful discrimination, see Part Four.


Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Doe	John	A	

Address *(Street Name and Number)*	Apt. #	Date of Birth *(month/day/year)*
123 Main Street	1	01/01/1952

City	State	Zip Code	Social Security #
Washington	DC	20011	000-00-0000

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):
- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #)
- ☒ An alien authorized to work (Alien # or Admission #) 00000000000 until (expiration date, if applicable - *month/day/year*) 02/28/2011

Employee's Signature John Doe — Date *(month/day/year)* 02/20/2009

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature Jane Doe — Print Name Jane Doe

Address *(Street Name and Number, City, State, Zip Code)* 123 Main Street, Apt. 2, Washington, DC 20011 — Date *(month/day/year)* 02/20/2009

Figure 1: Instructions for Completing Section 1: Employee Information and Verification

1. Employee enters full name and maiden name, if applicable.
2. Employee enters current address and date of birth.
3. Employee enters his or her city, state, ZIP Code, and Social Security number. Entering the Social Security number is optional unless the employer verifies employment authorization through the USCIS E-Verify Program.
4. Employee reads warning and attests to his or her citizenship or immigration status.
5. Employee signs and dates the form.
6. If the employee uses a preparer or translator to fill out the form, that person must certify that he or she assisted the employee by completing this signature block.

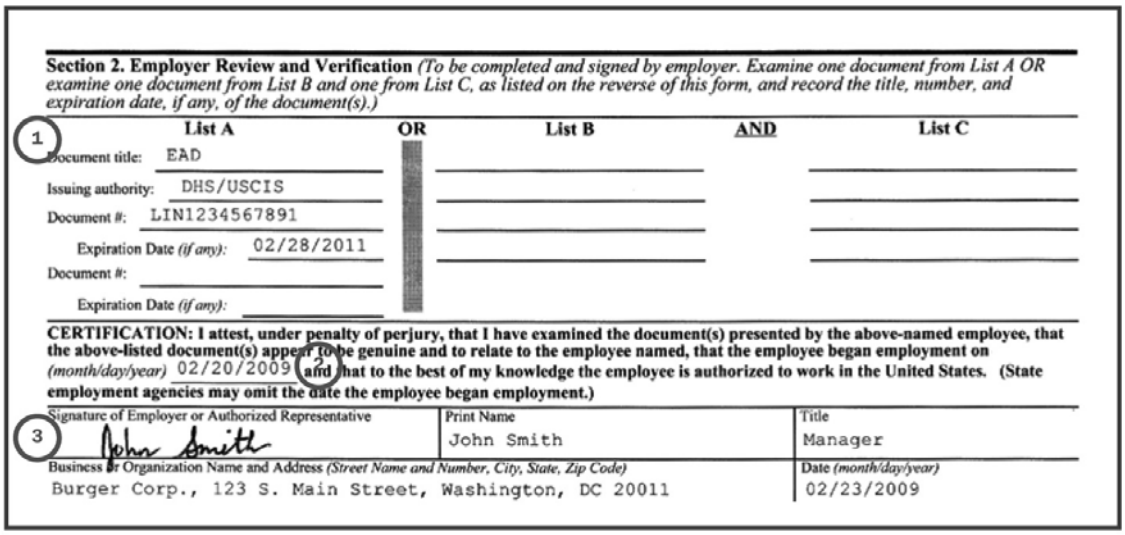
Section 2

The employee must present to you an original document or documents that establish identity and employment eligibility within 3 business days of the date employment begins. Some documents establish both identity and employment eligibility (List A). Other documents establish identity only (List B) or employment authorization only (List C). The employee can choose which document(s) he or she wants to present from the List of Acceptable Documents. This list appears in Part Eight and on the last page of the Form I-9.

Examine the original document or documents the employee presents and then fully complete Section 2 of the Form I-9. You must examine one document from List A, or one from List B **AND** one from List C. Record the title, issuing authority, number, and expiration date (if any) of the document(s); fill in the date of hire and correct information in the certification block; and sign and date the Form I-9. You must accept any document(s) from the Lists of Acceptable Document presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them. You may not specify which document(s) an employee must present.

NOTE: If you participate in the E-Verify Program, you may only accept List B documents that bear a photograph.

In certain circumstances, employers, recruiters and referrers for a fee must accept a receipt in lieu of a List A, List B, or a List C document if one is presented by an employee. A receipt indicating that an individual has applied for initial work authorization or for an extension of expiring work authorization is NOT acceptable proof of employment eligibility on the Form I-9. Receipts are never acceptable if employment lasts less than 3 business days.



Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

1 List A	OR	List B	AND	List C
Document title: EAD				
Issuing authority: DHS/USCIS				
Document #: LIN1234567891				
Expiration Date *(if any)*: 02/28/2011				
Document #:				
Expiration Date *(if any)*:				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* 02/20/2009 (2) **and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)**

3 Signature of Employer or Authorized Representative	Print Name	Title
John Smith	John Smith	Manager
Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)*		Date *(month/day/year)*
Burger Corp., 123 S. Main Street, Washington, DC 20011		02/23/2009

Figure 2: Section 2: Employer Review and Verification

(1) Employer records document title(s), issuing authority, document number, and the expiration date from original documents supplied by employee. See Part Eight for the Lists of Acceptable Documents.

NOTE: You may use abbreviations for commonly used documents, e.g., DL for driver's license and SS for Social Security.

(2) Employer enters date employment began.

(3) Employer attests to examining the documents provided by filling out the signature block.

Receipts and other documents that serve as proof of temporary employment eligibility that employers can accept are:

1. Receipts for the application of a replacement document where the document was lost, stolen, or destroyed, which can be a List A, List B, or List C document. The employee must present the replacement document within 90 days from the date of hire.

2. The arrival portion of a Form I-94 with an attached photo and a temporary I-551 stamp, which is a receipt for a List A document. When the stamp expires, or if the stamp has no expiration, one year from date of issue, the employee must present the Form I-551 Permanent Resident Card.

3. The departure portion of the Form I-94 with a refugee admission stamp, which is a receipt for a List A document. The employee must present, within 90 days from date of hire, Form I-766, or a List B document and an unrestricted Social Security card.

When the employee provides an acceptable receipt, the employer should record the document title in Section 2 of the Form I-9 and write the word “receipt” and any document number in the “Document #” space. When the employee presents the actual document, the employer should cross out the word “receipt” and any accompanying document number, insert the number from the actual document presented, and initial and date the change.

Minors (Individuals under Age 18)

If a minor – a person under the age of 18 – cannot present a List A document or an identity document from List B, complete Form I-9 as follows:

1. A parent or legal guardian must complete Section 1 and write "Individual under age 18" in the space for the employee's signature;

2. The parent or legal guardian must complete the "Preparer/Translator Certification" block;

3. Write "Individual under age 18" in Section 2,under List B; and

4. The minor must present a List C document showing his or her employment eligibility. You should record the required information in the appropriate space in Section 2.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
1 Doe	Jane	B	
Address *(Street Name and Number)*		Apt. #	Date of Birth *(month/day/year)*
123 Cross Street		1	05/15/1993
City	State	Zip Code	Social Security #
Washington	DC	20011	000-00-0000

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):

- [x] A citizen of the United States
- [ ] A noncitizen national of the United States (see instructions)
- [ ] A lawful permanent resident (Alien #) _____
- [ ] An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - *month/day/year*) _____

1 Employee's Signature INDIVIDUAL UNDER AGE 18 Date *(month/day/year)* 02/20/2009

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

2 Preparer's/Translator's Signature: John Doe | Print Name: John Doe

Address *(Street Name and Number, City, State, Zip Code)*: 123 Cross Street, Apt. 1, Washington, DC 20011 | Date *(month/day/year)*: 02/20/2009

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

	List A	OR	List B	AND	List C
Document title:			3 Individual under age 18		3 Social Security Card
Issuing authority:					SSA 000-00-0000
Document #:					
Expiration Date *(if any)*:					
Document #:					
Expiration Date *(if any)*:					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* 02/20/2009 **and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative	Print Name	Title
John Smith	John Smith	Floor Manager
Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)*		Date *(month/day/year)*
Warm Coat Co. 456 S. Main Street, Washington, DC 20013		02/23/2009

Figure 3: Completing Form I-9 for Minors

1. A parent or legal guardian of a minor employee completes Section 1 and writes, "Individual under age 18" in signature space.
2. A parent or legal guardian completes the Preparer and/or Translator block.
3. Enter "Individual under age 18" under List B and records the List C document the minor presents.

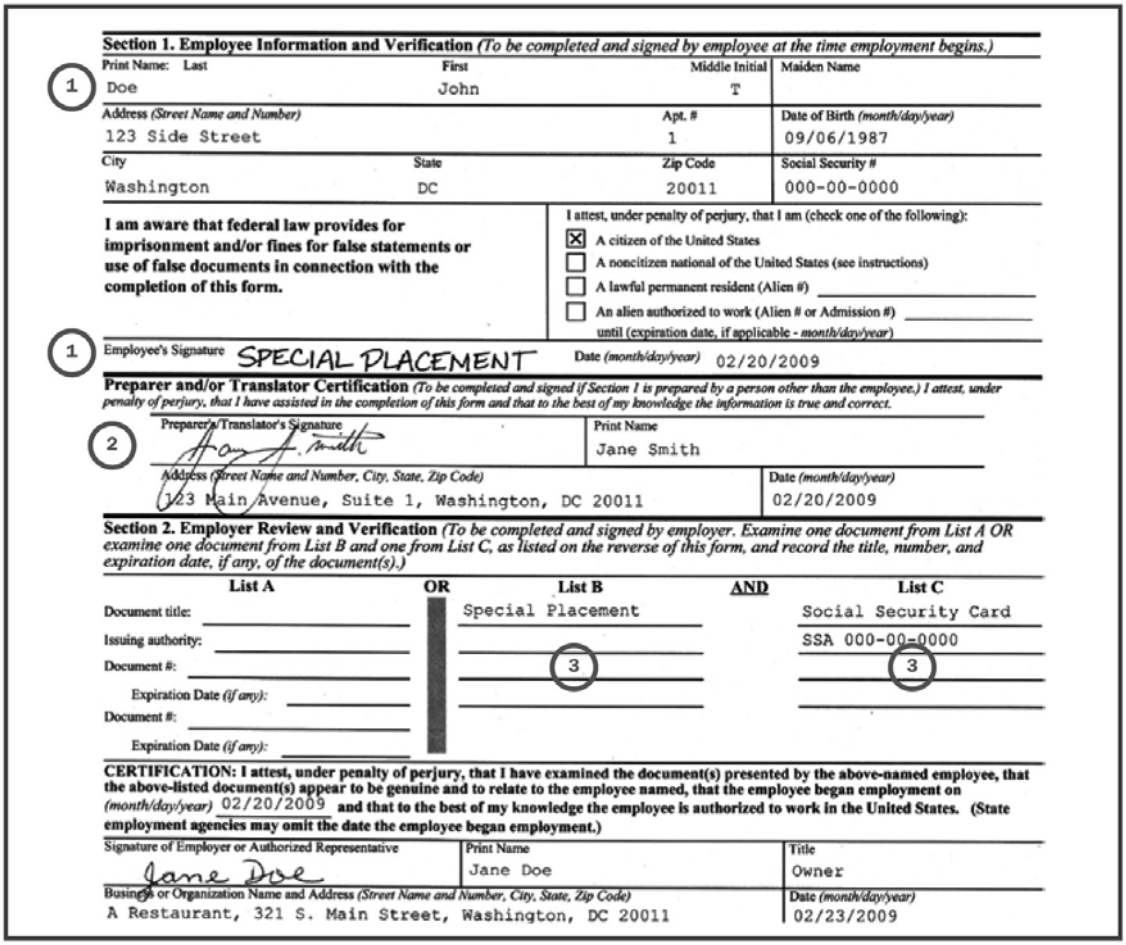
Employees with Disabilities (Special Placement)
If a person with a disability, who is placed in a job by a nonprofit organization, association, or as part of a rehabilitation program, cannot present a List A document or an identity document from List B, complete Form I-9 as follows:

1. A representative of the nonprofit organization, a parent or a legal guardian must complete Section 1 and write "Special Placement" in the space for the employee's signature;

2. The representative, parent or legal guardian must complete the "Preparer/Translator Certification" block;

3. You should write "Special Placement" in Section 2, under List B, and

4. The employee with a disability must present a List C document showing his or her employment authorization. You Record the required information in the appropriate space in Section 2.



Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

1 Print Name: Last: Doe | First: John | Middle Initial: T | Maiden Name:
Address (Street Name and Number): 123 Side Street | Apt. #: 1 | Date of Birth (month/day/year): 09/06/1987
City: Washington | State: DC | Zip Code: 20011 | Social Security #: 000-00-0000

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):
- [x] A citizen of the United States
- [ ] A noncitizen national of the United States (see instructions)
- [ ] A lawful permanent resident (Alien #) ____
- [ ] An alien authorized to work (Alien # or Admission #) ____ until (expiration date, if applicable - month/day/year)

1 Employee's Signature: SPECIAL PLACEMENT | Date (month/day/year): 02/20/2009

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

2 Preparer's/Translator's Signature: Jane Smith | Print Name: Jane Smith
Address (Street Name and Number, City, State, Zip Code): 123 Main Avenue, Suite 1, Washington, DC 20011 | Date (month/day/year): 02/20/2009

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title:		Special Placement		Social Security Card
Issuing authority:				SSA 000-00-0000
Document #:		3		3
Expiration Date (if any):				
Document #:				
Expiration Date (if any):				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* 02/20/2009 **and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative: Jane Doe | Print Name: Jane Doe | Title: Owner
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code): A Restaurant, 321 S. Main Street, Washington, DC 20011 | Date (month/day/year): 02/23/2009

Figure 4: Completing Form I-9 for Employees with Disabilities (Special Placement)

1. A representative of a nonprofit organization, parent or legal guardian of an individual with a disability completes Section 1 and writes, "Special Placement" in signature space.
2. The representative, parent, or legal guardian completes the Preparer and/or Translator block.
3. Enter "Special Placement" under List B and records the List C document the employee with a disability presents.

Future Expiration Dates

Future expiration dates may appear on the employment authorization documents of aliens, including, among others, permanent residents and refugees. USCIS includes expiration dates even on documents issued to aliens with permanent work authorization. The existence of a future expiration date:

1. Does not preclude continuous employment authorization;

2. Does not mean that subsequent employment authorization will not be granted; and

3. Should not be considered in determining whether the alien is qualified for a particular position.

Considering a future employment authorization expiration date in determining whether an alien is qualified for a particular job may constitute employment discrimination. (See Part Four.) However, as described below, you may need to reverify the employee's eligibility to work upon the expiration of certain List A or List C documents.

Reverifying Employment Authorization for Current Employees

When an employee's work authorization expires, you must reverify his or her employment eligibility. You may use Section 3 of the Form I-9, or, if Section 3 has already been used for a previous reverification or update, use a new Form I-9. If you use a new form, you should write the employee's name in Section 1, complete Section 3, and retain the new form with the original. The employee must present a document that shows either an extension of the employee's initial employment authorization or new work authorization. If the employee cannot provide you with proof of current work authorization (e.g. any document from List A or List C, including an unrestricted Social Security card), you cannot continue to employ that person.

NOTE: List B identity documents, such as a driver's license, should not be reverified when they expire.

To maintain continuous employment eligibility, an employee with temporary work authorization should apply for new work authorization at least 90 days before the current expiration date. If USCIS fails to adjudicate the application for employment authorization within 90 days, then the employee will be authorized for employment on Form I-766 for a period not to exceed 240 days.

NOTE: You must reverify an employee's employment eligibility on the Form I-9 not later than the date the employee's work authorization expires.

Reverifying or Updating Employment Authorization for Rehired Employees

When you rehire an employee, you must ensure that he or she is still authorized to work. You may do this by completing a new Form I-9 or you may reverify or update the original form by completing Section 3.

If you rehire an employee who has previously completed a Form I-9, you may reverify on the employee's original Form I-9 (or on a new Form I-9 if Section 3 of the original has already been used) if:

1. You rehire the employee within three years of the initial date of hire; and

2. The employee's previous grant of work authorization has expired, but he or she is currently eligible to work on a different basis or under a new grant of work authorization than when the original Form I-9 was completed.

3. The employee is still eligibile to work on the same bases as when Form I-9 was completed.

To reverify, you must:

1. Record the date of rehire;

2. Record the document title, number and expiration date (if any) of any document(s) presented;

3. Sign and date Section 3; and

4. If you are reverifying on a new Form I-9, write the employee's name in Section 1.

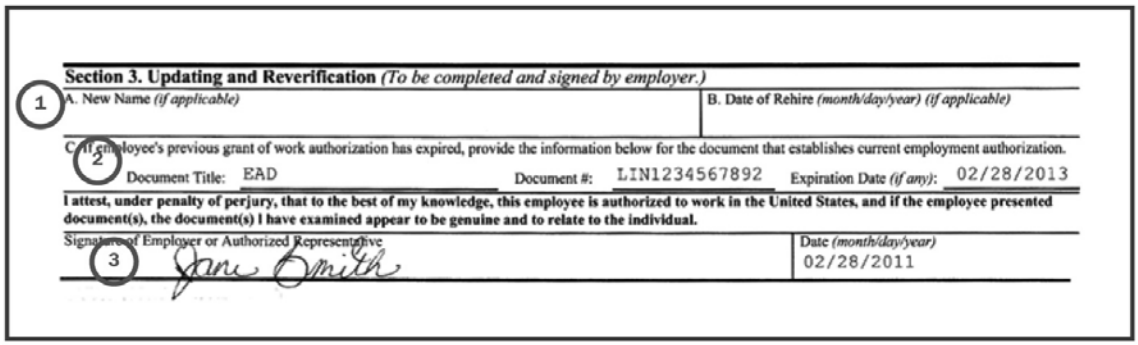
To update, you must:

1. Record the date of rehire;

2. Sign and date Section 3; and

3. If you are updating on a new Form I-9, write the employee's name in Section 1.

NOTE: You must complete a new Form I-9 if the version of the form you used for the previous verification has since been replaced by a newer version.



Section 3. Updating and Reverification *(To be completed and signed by employer.)*

1 A. New Name *(if applicable)* | B. Date of Rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

2 Document Title: EAD Document #: LIN1234567892 Expiration Date *(if any)*: 02/28/2013

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 | Date *(month/day/year)*

3 Jane Smith 02/28/2011

Figure 5: Reverification of Employment Authorization for Current Employees and Rehires

1. Record the employee's new name, if applicable, and date of rehire, if applicable.
2. Record the document title, number, and expiration date (if any) of document(s) presented.
3. Sign and date.

NOTE: You may also fill out a new Form I-9 in lieu of filling out this section.

Part Three
Photocopying and Retaining the Form I-9

Employers must retain completed Forms I-9 for all employees for 3 years after the date they hire an employee or 1 year after the date employment is terminated, whichever is later. These forms can be retained in paper, microfilm, microfiche, or, more recently, electronically.

To store Forms I-9 electronically, you may use any electronic recordkeeping, attestation, and retention system that complies with DHS standards, which includes most off-the-shelf computer programs and commercial automated data processing systems. However, the system must not be subject to any agreement that would restrict access to and use of it by an agency of the United States. (See Electronic Retention of Forms I-9 below.)

Issues Relating to Merging or Successive Companies

If you acquire a business and its employees, you may choose to keep the previous owner's Forms I-9 for each acquired employee, but you are responsible for any errors or omissions in them. To avoid this liability, you may choose to complete a new Form I-9 for each acquired employee. If you do so, you must do so uniformly for all of you acquired employees, without regard to actual or perceived citizenship status or national origin.

Paper Retention of Forms I-9

Form I-9 can be signed and stored in paper format. Simply reproduce a complete, blank Form I-9, and ensure that the employee receives the instructions for completing the form.

When copying or printing the paper Form I-9, you may reproduce the two-sided form by making either double-sided or single-sided copies.

You may retain completed paper forms onsite, or at an off-site storage facility, for the required retention period, as long as you are able to present the Forms I-9 within 3 days of an audit request from DHS, OSC, or DOL officers.

Microform Retention of Forms I-9

You may store Forms I-9 on microfilm or microfiche. To do so:

1. Select film stock that will preserve the image and allow accessibility and usability for the entire retention period, which in certain circumstances could be upward of 20 years, depending on the employee and your business.

2. Use well-maintained equipment to create and view microfilms and microfiche that provides a high degree of legibility and readability, and has the ability to reproduce legible and readable paper copies. DHS officers must have immediate access to clear, readable documents should they need to inspect your forms.

3. We suggest that you place the required indexes either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

Remember: Forms I-9 must be stored for 3 years after the date you hire an employee or 1 year after the date you or the employee terminates employment, whichever is later. For example, if an employee retires from your company after 15 years, you will need to store his or her Form I-9 for a total of 16 years.

Electronic Forms I-9

USCIS provides a Portable Document Format fillable-printable Form I-9 from its website, www.uscis.gov. The Form I-9 can also be electronically generated or retained, provided that:

1. The resulting form is legible;

2. No change is made to the name, content, or sequence of the data elements and instructions;

3. No additional data elements or language are inserted;

4. The employee receives the Form I-9 instructions; and

5. The standards specified under 8 CFR 274a.2(e) are met.

Electronic Retention of Forms I-9
You may complete or retain the Form I-9 in an electronic generation or storage system that includes:

1. Reasonable controls to ensure the integrity, accuracy and reliability of the electronic storage system;

2. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature if used;

3. An inspection and quality assurance program evidenced by regular evaluations of the electronic generation or storage system, including periodic checks of electronically stored Forms I-9, including the electronic signature if used;

4. A retrieval system that includes an indexing system that permits searches by any data element; and

5. The ability to reproduce legible paper copies.

Remember, *Forms I-9 must be stored for 3 years after the date you hire an employee or 1 year after the date you or the employee terminates employment, whichever is later, which can result in a long retention period.*

Retaining Copies of Form I-9 Documentation

You may choose to copy or scan documents presented by an employee, which you must retain with his or her Form I-9. Retaining copies of documentation does not relieve you from the requirement to fully complete section 2 of the Form I-9. If you choose to retain copies of employee documentation, you may not just do so for employees of certain national origins or citizenship statuses, or you may be in violation of anti-discrimination laws.

Electronic Signature of Forms I-9

You may choose to fill out a paper Form I-9 and scan and upload the signed Form to retain it electronically. Once you have securely stored the Form I-9 in electronic format, you may destroy the original paper Form I-9.

If you complete Forms I-9 electronically using an electronic signature, you must implement a system for capturing electronic signatures that allows signatories to acknowledge that they read the attestation; and can associate an electronic signature with an electronically completed Form I-9. In addition, the system must:

1. Affix the electronic signature at the time of the transaction;
2. Create and preserve a record verifying the identity of the person producing the signature; and

3. Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

NOTE: If you choose to use electronic signature to complete Form I-9, but do not comply with these standards, DHS will determine that you have not properly completed the Form I-9, in violation of Section 274A(a)(1)(B) of the INA. (8 CFR Part 274a 2(f)(2)

System Documentation

For each electronic generation or storage system used, you must maintain, and make available upon request, complete descriptions of:

1. The electronic generation and storage system, including all procedures relating to its use;

2. The indexing system, which permits the identification and retrieval for viewing or reproducing of relevant records maintained in an electronic storage system; and

3. The business processes that create, modify, and maintain the retained Forms I-9, and establish the authenticity and integrity of the Forms, such as audit trails.

Note: Insufficient or incomplete documentation is a violation of section 274A(a)(1)(B) of the Act (8 CFR Part 274a.2(f)(2)).

Security

If you retain Forms I-9 electronically, you must implement a records security program that:

1. Ensures that only authorized personnel have access to electronic records;

2. Provides for backup and recovery of records to protect against information loss;

3. Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and

4. Ensures that whenever an individual creates, accesses, views, updates, or corrects an electronic record, the system creates a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

Note: If an employer's action or inaction results in the alteration, loss, or erasure of electronic records, and the employer knew, or reasonably should be known, that

the action or inaction could have that effect, the employer is in violation of Section 274A(a)(1)(B) of the Act.

Inspection

DHS, OSC and DOL give employers three day's notice prior to inspecting retained Forms I-9. The employer must make Forms I-9 available upon request at the location where DHS, OSC or DOL requests to see them.

If you store Forms I-9 at an off-site location, inform the inspecting officer of the location where you store them, and make arrangements for the inspection. The inspecting officers can perform your inspection at an office of an authorized agency of the United States if previous arrangements are made. Recruiters or referrers for a fee who designate an employer to complete employment verification procedures may present a photocopy or printed electronic image of the Form I-9 at an inspection. If you refuse or delay an inspection, you will be in violation of DHS retention requirements.

At the time of an inspection, you must:

1. Retrieve and reproduce only the Forms I-9 electronically retained in the electronic storage system and supporting documentation specifically requested by the inspecting officer. This documentation includes associated audit trails that show who has accessed a computer system and the actions performed within or on the computer system during a given period of time.

2. Provide the inspecting officer with appropriate hardware and software, personnel, and documentation necessary to locate, retrieve, read, and reproduce any electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.

3. Provide the inspecting officer, if requested, any reasonably available or obtainable electronic summary file(s), such as a spreadsheet, containing all of the information fields on all of the electronically stored Forms I-9.

Part Four
Unlawful Discrimination and Penalties for Prohibited Practices

Unlawful Discrimination

General Provisions

The anti-discrimination provision of the Act, as amended, prohibits 4 types of unlawful conduct:

1. Citizenship or immigration status discrimination;
2. National origin discrimination;
3. Unfair documentary practices during the Form I-9 process (document abuse); and
4. Retaliation.

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), part of the United States Department of Justice Civil Rights Division, enforces the anti-discrimination provision of the INA. Title VII of the Civil Rights Act of 1964 (Title VII), as amended, also prohibits national origin discrimination, among other types of conduct. The United States Equal Employment Opportunity Commission (EEOC) enforces Title VII.

As discussed further below, OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between 4 and 14 employees. OSC's jurisdiction over national origin discrimination claims is limited to intentional acts of discrimination with respect to hiring, firing, and recruitment or referral for a fee, but the EEOC's jurisdiction is broader. Title VII covers both intentional and unintentional acts of discrimination in the workplace, including discrimination in hiring, firing, recruitment, promotion, assignment, compensation, and other terms and conditions of employment. OSC has exclusive jurisdiction over citizenship or immigration status discrimination claims against all employers with four or more employees. Similarly, OSC has jurisdiction over all document abuse claims against employers with four or more employees.

Types of Employment Discrimination Prohibited Under the INA

Document Abuse

Discriminatory documentary practices related to verifying the employment eligibility of employees and the Form I-9 process are called document abuse. Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship status in the Form I-9 process. Document abuse can be broadly categorized into four types of conduct:

1) improperly requesting that employees produce more documents than are required by the Form I-9 to establish the employee's identity and work authorization;

2) improperly requesting that employees produce a particular document, such as a "green card," to establish identity or work eligibility;

3) improperly rejecting documents that reasonably appear to be genuine and belong to the employee presenting them;

4) improperly treating groups of applicants differently when completing the Form I-9, such as requiring certain groups of employees that look or sound "foreign" to produce particular documents the employer does not require other employees to produce.

These practices may constitute unlawful document abuse and should be avoided when verifying employment eligibility. All work authorized individuals are protected against this type of discrimination. The INA's prohibition against document abuse covers employers with 4 or more employees.

Citizenship Status Discrimination

Citizenship or immigration status discrimination occurs when an employer treats employees differently based on their citizenship or immigration status in regard to hiring, firing, or recruitment or referral for a fee. U.S. citizens, recent permanent residents, temporary residents under the IRCA legalization program, asylees, and refugees are protected. An employer must treat all of these groups the same. Subject to limited exceptions, the INA's prohibition against citizenship or immigration status discrimination covers employers with 4 or more employees.

National Origin Discrimination

This form of discrimination occurs when an employer treats employees differently based on their national origin in regard to hiring, firing, or recruitment or referral for a fee. An employee's national origin relates to the employee's place of birth, country of origin, ancestry, native language, accent, or because he or she is perceived as looking or sounding "foreign." All work-authorized individuals are protected from national origin discrimination. The INA's prohibition against intentional national origin discrimination generally covers employers with 4 to 14 employees.

Retaliation

Retaliation occurs when an employer or other covered entity intimidates, threatens, coerces, or otherwise retaliates against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participated in any immigration-related employment discrimination investigation, proceeding, or hearing; or otherwise asserts his or her rights under the INA's anti-discrimination provision.

Types of Discrimination Prohibited by Title VII

As noted above, Title VII also prohibits employment discrimination on the basis of national origin, as well as race, color, religion, and sex. Title VII covers employers that employ 15 or more employees for 20 or more weeks in the preceding or current calendar year, and prohibits discrimination in any aspect of employment, including: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and leave; or other terms and conditions of employment.

Avoiding Discrimination in Recruiting, Hiring and the Form I-9 Process

In practice, employers should treat employees equally when recruiting and hiring, and when verifying employment eligibility and completing the Form I-9. Employers should not:

1. Set different employment eligibility verification standards or require that different documents be presented by employees because of their national origin and citizenship status. For example, you cannot demand that non-U.S. citizens present DHS-issued documents. Each employee must be allowed to choose the documents that he or she will produce from the lists of acceptable Form I-9 documents. For example, both citizens and work authorized aliens may produce a driver's license (List B) and an unrestricted Social Security card (List C) to establish identity and employment eligibility. However, documents that are clearly inconsistent may be rejected.

2. Request to see employment eligibility verification documents before hire and completion of the Form I-9 because someone looks or sounds "foreign," or because someone states that he or she is not a U.S. citizen.

3. Refuse to accept a document, or refuse to hire an individual, because a document has a future expiration date.

4. Request that, during reverification, an employee present a new unexpired employment authorization document (EAD) if he or she presented an EAD during initial verification. For reverification, each employee must be free to choose to present any document either from List A or from List C. Refugees and asylees may possess EADs, but they are authorized to work based on their status, and may possess other documents that prove work authorization from List A or List C to show upon reverification, such as an unrestricted Social Security card.

5. Limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law; regulation; executive order; or federal, state, or local government contract. On an individual basis, an employer may legally prefer a U.S. citizen or national over an equally qualified alien to fill a specific position, but may not adopt a blanket policy of always preferring citizens over non-citizens.

Procedures for Filing Charges of Employment Discrimination

OSC

Discrimination charges may be filed by an individual who believes he or she is the victim of employment discrimination, a person acting on behalf of such an individual, or a DHS officer who has reason to believe that discrimination has occurred. Discrimination charges must be filed with OSC within 180 days of the alleged discriminatory act. Upon receipt of a complete discrimination charge, OSC will notify the employer within 10 days that a charge has been filed and commence its investigation. If OSC has not filed a complaint with an administrative law judge within 120 days of receiving a charge of discrimination, it will notify the charging party of its determination not to file a complaint. The charging party (other than a DHS officer) may file a complaint with an administrative law judge within 90 days after receiving the notice from OSC. In addition, OSC may still file a complaint within this 90-day period. The administrative law judge will conduct a hearing and issue a decision. OSC may also attempt to settle a charge or the parties may enter into settlement agreements resolving the charge.

EEOC

A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights. This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

Employers Prohibited from Retaliating against Employees

An employer cannot take retaliatory action against a person who has filed a charge of discrimination with OSC or the EEOC, was a witness or otherwise participated in the investigation or prosecution of a discrimination complaint, or otherwise asserts his or her rights under the INA's anti-discrimination provision and/or Title VII. Such retaliatory action may constitute a violation of the INA's anti-discrimination provision and/or Title VII.

Additional Information

For more information about the anti-discrimination provision of the INA and the procedures of OSC, call 1-800-255-7688 (worker hotline) or 1-800-255-8155 (employer hotline); or 1-800-237-2515 (TDD for hearing impaired); or visit OSC's website at http://www.usdoj.gov/crt/osc.
For more information on Title VII and policies and procedures of the Equal Employment Opportunity Commission, call 1-800-USA-EEOC; or 1-800-669-6820 (TTY for hearing impaired); or visit EEOC's website at http://www.eeoc.gov.

Penalties for Prohibited Practices

A. UNLAWFUL EMPLOYMENT

1. Civil Penalties

DHS) may impose penalties if an investigation reveals that an employer has knowingly hired or knowingly continued to employ an unauthorized alien, or has failed to comply with the employment eligibility verification requirements, with respect to employees hired after November 6, 1986. DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. Employers who receive a NIF may request a hearing before an administrative law judge. If an employer's request for a hearing is not received within 30 days, DHS will impose the penalty and issue a Final Order, which cannot be appealed.

a. Hiring or continuing to employ unauthorized aliens

DHS may order employers it determines to have knowingly hired unauthorized aliens (or to be continuing to employ aliens knowing that they are or have become unauthorized to work in the United States) to cease and desist from such activity, and pay a civil money penalty as follows:

1. First Offense: Not less than $375 and not more than $3,200 for each unauthorized alien;

2. Second offense: Not less than $3,200 and not more than $6,500 for each unauthorized alien; or

3. Subsequent Offenses: Not less than $4,300 and not more than $11,000 for each unauthorized alien.

DHS will consider you to have knowingly hired an unauthorized alien if, after November 6, 1986, the employer uses a contract, subcontract or exchange, entered into, renegotiated or extended, to obtain the labor of an alien and knows the alien is not authorized to work in the United States. The employer will be subject to the penalties set forth above.

b. Failing to comply with the Form I-9 requirements

Employers who fail to properly complete, retain, and/or make available for inspection Forms I-9 as required by law may face civil money penalties in an amount of not less than $110 and not more than $1,100 for each violation.

In determining the amount of the penalty, DHS will consider:

1. The size of the business of the employer being charged;

2. The good faith of the employer;

3. The seriousness of the violation;

4. Whether or not the individual was an unauthorized alien; and

5. The history of previous violations of the employer.

c. Enjoining pattern or practice violations

If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A(a)(1)(A) or (2) of the Act, the Attorney General may bring civil action in the appropriate U.S. District Court requesting relief, including a permanent or temporary injunction, restraining order or other order against the person or entity, as the Attorney General deems necessary.

d. Requiring indemnification

Employers found to have required a bond or indemnity from an employee against liability under the employer sanctions laws may be ordered to pay a civil money penalty of $1,100 for each violation and to make restitution, either to the person who was required to pay the indemnity, or, if that person cannot be located, to the U.S. Treasury.

e. Good faith defense

If the you can show that you have, in good faith, complied with the Form I-9 requirements, then you have established a "good faith" defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that you had actual knowledge of the unauthorized status of the employee.

A good faith attempt to comply with the paperwork requirements of Section 274A(b) of the Act may be adequate notwithstanding a technical or procedural failure to comply, unless the employer has failed to correct the violation within 10 days after notice from DHS.

2. Criminal Penalties

Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens

Persons or entities who are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing that they are or have become unauthorized to work in the United States) after November 6, 1986, may face fines of up to $3,000 per employee and/or 6 months imprisonment.

Engaging in fraud or false statements, or otherwise misusing visas, immigration permits and identity documents

Persons who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another person, or who make a false statement or attestation for purposes of satisfying the employment eligibility verification requirements, may be fined, or imprisoned for up to five years, or both. Other federal criminal statutes may provide higher penalties in certain fraud cases.

B. UNLAWFUL DISCRIMINATION

If an investigation reveals that you engaged in unfair immigration-related employment practices under the INA, OSC may take action. You will be ordered to stop the prohibited practice and may be ordered to take one or more corrective steps, including:

1. Hiring or reinstating, with or without back pay, individuals directly injured by the discrimination;

2. Posting notices to employees about their rights and about employers' obligations;

3. Educating all personnel involved in hiring about complying with the employer sanctions and antidiscrimination laws about the requirements of these laws.

The court may award attorney's fees to prevailing parties, other than the United States, if it determines that the losing parties' argument is without foundation in law and fact.

Employers who commit citizenship status or national origin discrimination in violation of the anti-discrimination provision of the INA may also be ordered to pay a civil money penalty as follows:

1. First Offense: Not less than $375 and not more than $2,200 for each individual discriminated against;

2. Second Offense: Not less than $3,200 and not more than $5,500 for each individual discriminated against;

3. Subsequent Offenses: Not less than $4,300 and not more than $11,000 for each individual discriminated against.

Employers who commit document abuse in violation of the anti-discrimination provision of the INA may similarly be ordered to pay a civil money penalty as follows:

1. Not less than $110 and not more than $1,100 for each individual discriminated against.

If an employer is found to have committed national origin discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), it may be ordered to stop the prohibited practice and to take one or more corrective steps, including:

1. Hiring, reinstating or promoting with back pay and retroactive seniority;

2. Posting notices to employees about their rights and about the employer's obligations; and/or

3. Removing incorrect information, such as a false warning, from an employee's personnel file.

Under Title VII, compensatory damages may also be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages may be available if the employer acted with malice or reckless indifference.

The employer may also be required to pay attorneys' fees, expert witness fees and court costs.

C. CIVIL DOCUMENT FRAUD

If a DHS investigation reveals that an individual has knowingly committed or participated in acts relating to document fraud (See Part One), DHS may take action. DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. Persons who receive a NIF may request a hearing before an administrative law judge. If DHS does not receive a request for a hearing within 30 days, it will impose the penalty and issue a Final Order, which is final and cannot be appealed.

Individuals found by DHS or an administrative law judge to have violated Section 274C of the Act may be ordered to cease and desist from such behavior and to pay a civil penalty as follows:

a. First offense: Not less than $375 and not more than $3,200 for each fraudulent document that is the subject of the violation; or

b. Subsequent offenses: Not less than $3,200 and not more than $6,500 for each fraudulent document that is the subject of the violation.

Part Five
Instructions for Recruiters and Referrers for a Fee

Under the Immigration and Nationality Act (INA), as amended, it is unlawful for an agricultural association, agricultural employer, or farm labor contractor to hire, or to recruit or refer for a fee, an individual for employment in the United States without complying with the employment eligibility verification requirements. This provision applies to those agricultural associations, agricultural employers, and farm labor contractors who recruit persons for a fee and those who refer persons or provide documents or information about persons to employers in return for a fee.

This limited class of recruiters and referrers for a fee must complete the Form I-9 when a person they refer is hired. The Form I-9 must be fully completed within three business days of the date employment begins, or, in the case of an individual hired for less than three business days, at the time employment begins.

Recruiters and referrers for a fee may designate agents, such as national associations or employers, to complete the verification procedures on their behalf. If the employer is designated as the agent, the employer should provide the recruiter or referrer with a photocopy of the Form I-9. However, recruiters and referrers are still responsible for compliance with the law and may be found liable for violations of the law.

Recruiters and referrers for a fee must retain the Form I-9 for three years after the date the referred individual was hired by the employer. They must also make Forms I-9 available for inspection by a DHS, DOL, or OSC officer.

NOTE: This does not preclude DHS or DOL from obtaining warrants based on probable cause for entry onto the premises of suspected violators without advance notice.

The penalties for failing to comply with the Form I-9 requirements and for requiring indemnification, as described in Part Four, apply to this limited class of recruiters and referrers for a fee.

NOTE: All recruiters and referrers for a fee are still liable for knowingly recruiting or referring for a fee aliens not authorized to work in the United States.

Part Six
E-Verify: The Web-based Verification Companion to the Form I-9

Since verification of the employment eligibility of new hires became law in 1986, the Form I-9 has been the foundation of the verification process. To improve the accuracy and integrity of this process, USCIS operates an electronic employment eligibility verification system called E-Verify.

E-Verify provides an automated link to federal databases to help employers determine the employment eligibility of new hires. E-Verify is free to employers and is available in all 50 states, as well as U.S. territories except for American Samoa and the Commonwealth of the Northern Mariana Islands.

Employers who participate in the E-Verify Program complete the Employment Eligibility Verification Form (Form I-9) for each newly hired employee as is required of all employers in the United States. E-Verify employers may accept any document or combination of documents acceptable on the Form I-9, but if the employee chooses to present a List B and C combination, the List B (identity only) document must have a photograph.

After completing the Form I-9 for a new employee, E-Verify employers must submit an electronic query that includes information from Sections 1 and 2 of the Form I-9. After submitting the query, the employer will receive an automated response from the E-Verify system regarding the employment eligibility of the individual. In some cases, E-Verify will provide a response indicating a tentative nonconfirmation of the employee's employment eligibility. This does not mean that the employee is necessarily unauthorized to work in the United States. Rather, it means that the system is unable to instantaneously confirm that employee's eligibility to work. In the case of a tentative nonconfirmation, the both you and the employee must take steps specified by E-Verify to resolve the status of the query within the prescribed time period.

You must also follow certain procedures when using E-Verify that were designed to protect employees from unfair employment actions. You must verify all new hires, both U.S. citizens and non-citizens, and may not verify selectively.You may not prescreen applicants for employment; check employees hired before the company became a participant in E-Verify; or reverify employees who have temporary employment authorization. Youmay not terminate or take other adverse action against employees based on a tentative nonconfirmation.

E-Verify, along with Form I-9, protects jobs for authorized U.S. workers, improves the accuracy of wage and tax reporting, and helps U.S employers maintain a legal workforce.

Employers can register online for E-Verify at https://www..dhs.gov/E-Verify, which provides instructions for completing the registration process. For more information about E-Verify, please contact USCIS at 1-888-464-4218. or visit the Web site listed above.

Part Seven
Some Questions You May Have About the Form I-9

Questions about the Verification Process

1. Q. Where can I obtain the Form I-9 and the M-274, Handbook for Employers?

A. Both the Form I-9 and the Employer Handbook are available as downloadable PDFs at www.uscis.gov . Employers with no computer access can order USCIS forms by calling our toll-free number at 1-800-870-3676. Individuals can also get USCIS forms and information on immigration laws, regulations and procedures by calling our National Customer Service Center toll-free at 1-800-375-5283.

2. Q. Do citizens and nationals of the United States need to prove they are eligible to work?

A. Yes. While citizens and nationals of the United States are automatically eligible for employment, they too must present the required documents and complete a Form I-9. U.S. citizens include persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. U.S. noncitizen nationals are persons who owe permanent allegiance to the United States, including those born in American Samoa, including Swains Island.

3. Q. Do I need to complete a Form I-9 for everyone who applies for a job with my company?

A. No. You should not complete Forms I-9 for job applicants. You only need to complete Forms I-9 for people you actually hire. For purposes of this law, a person is "hired" when he or she begins to work for you.

4. Q. If someone accepts a job with my company but will not start work for a month, can I complete the Form I-9 when the employee accepts the job?

A. Yes. The law requires that you complete the Form I-9 only when the person actually begins working. However, you may complete the form earlier, as long as the person has been offered and has accepted the job. You may not use the I-9 process to screen job applicants.

5. Q. I understand that I must complete a Form I-9 for anyone I hire to perform labor or services in return for wages or other remuneration. What is "remuneration"?

A. Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

6. Q. Do I need to fill out Forms I-9 for independent contractors or their employees?

A. No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete Forms I-9 for that company's employees. The construction company is responsible for completing Forms I-9 for its own employees. However, you must not knowingly use contract labor to circumvent the law against hiring unauthorized aliens.

7. Q. What should I do if the person I hire is unable to provide the required documents within three business days of the date employment begins?

A. If an employee is unable to present the required document or documents within three business days of the date employment begins, the employee must produce an acceptable receipt in lieu of a document listed on the last page of the Form I-9. There are three types of acceptable receipts. See Question 23 below for a description of each receipt and the procedures required to fulfill Form I-9 requirements when an employee presents a receipt.

By having checked an appropriate box in Section 1, the employee must have indicated on or before the time employment began that he or she is already eligible to be employed in the United States.

NOTE: Employees hired for less than three business days must produce the actual document(s) and the Form I-9 must be fully completed at the time employment begins.

8. Q. May I fire an employee who fails to produce the required documents within three business days?

A. Yes. You may terminate an employee who fails to produce the required document or documents, or a receipt for a document, within three business days of the date employment begins. However, you must apply these practices uniformly to all employees.

9. Q. What happens if I properly complete a Form I-9 and DHS discovers that my employee is not actually authorized to work?

A. You cannot be charged with a verification violation. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien, unless the government can show you had knowledge of the unauthorized status of the employee, if you have done the following:

a. Ensured that the employee fully and properly completed Section 1 of the Form I-9 at the time employment began;

b. Reviewed the required documents which should have reasonably appeared to have been genuine and to have related to the person presenting them;

c. Fully and properly completed Section 2 of the Form I-9, and signed and dated the employer certification;

d. Retained the Form I-9 for the required period of time; and

e. Made the Form I-9 available upon request to a DHS, DOL, or OSC officer.

Questions about Documents

10. Q. May I specify which documents I will accept for verification?

A. No. The employee can choose which document(s) he or she wants to present from the lists of acceptable documents. You must accept any document (from List A) or combination of documents (one from List B and one from List C) listed on the Form I-9 and found in the Appendix of this Handbook that reasonably appear on their face to be genuine and to relate to the person presenting them. To do otherwise could be an unfair immigration-related employment practice in violation of the anti-discrimination provision in the INA. Individuals who look and/or sound foreign must not be treated

differently in the recruiting, hiring or verification process.

NOTE: An employer participating in the E-Verify Electronic Employment Eligibility Verification Program can only accept a List B document with a photograph.

11. Q. If an employee writes down an Alien Number or Admission Number when completing Section 1 of the Form I-9, can I ask to see a document with that number?

A. No. Although it is your responsibility as an employer to ensure that your employees fully complete Section 1 at the time employment begins, the employee is not required to present a document to complete this section. When you complete Section 2, you may not ask to see a document with the employee's Alien Number or Admission Number or otherwise specify which document(s) an employee may present.

12. Q. What is my responsibility concerning the authenticity of document(s) presented to me?

A. You must examine the document(s) and if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

13. Q. My employee has presented a U.S. passport card. Is this an acceptable document.

A**.** Yes, the passport card is a wallet-size document issued by the U.S. Department of State. While its permissible uses for international travel are more limited than the U.S. passport book, the passport card is a fully valid passport that attests to the U.S. citizenship and identity of the bearer. As such, the passport card is considered a "passport" for purposes of Form I-9 and has been included on List A of the Lists of Acceptable Documents on Form I-9.

14. Q. Why was documentation for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) added to the List of Acceptable Documents on Form I-9?

A. Under the Compacts of Free Association between the United States and FSM and RMI, most citizens of FSM and RMI are eligible to reside and work in the United States as nonimmigrants. The compact also eliminated the need for citizens of these two countries to obtain employment authorization cards to work in the United States. Now FSM and RMI citizens can show a valid passport with Form I-94 or I-94A to satisfy Form I-9 requirements.

15. Q. There are 3 documents on Form I-9 that are listed on both List B and List C. Does this mean that my employee may present 1 of those documents to prove both identity and employment authorization?

A. Three documents can be found in both List B and List C: a Native American tribal document, the U.S. Citizen Identification Card (Form I-97) and the Identification Card for the Use of Resident Citizen in the United States (Form I-179). If an employee presents any one of these documents, it establishes both identity and employment authorization on Form I-9, so you do not need any other documents from the employee to complete Section 2 of Form I-9

16. Q. An employee has attested to being a U.S. citizen or U.S. noncitizen national on Section 1 of Form I-9, but has presented me with an I-551, Permanent Resident Card, or "green card." Another employee has attested to being a lawful permanent resident but has presented a U.S. passport. Should I accept these documents?

A. In these situations, you should first ensure that the employee understood and properly completed the Section 1 attestation of status.If the employee made a mistake and corrects the attestation, he or she should initial and date the correction, or complete a new Form I-9. If the employee confirms the accuracy of his or her initial attestation, you should not accept a "green card" from a U.S.citizen or a U.S.passport from an alien. Although you are not expected to be an immigration law expert, both documents in question are inconsistent with the status attested to and are, therefore, not documents that reasonably relate to the person presenting them.

17. Q. May I accept an expired document?
No. Expired documents are no longer acceptable for Form I-9. However, you may accept Employment Authorization Documents (I-766) and Permanent Resident Cards (Form I-551) that appear to be expired on their face, but have been extended under the limited circumstances, described in Part 2, Section 2, Table 2.

Individuals under the Temporary Protected Status (TPS) Program whose Employment Authorization Documents appear to be expired but were actually automatically extended via Federal Register notice may continue to work based on their Employment Authorization Documents during the automatic extension period specified in the Federal Register notice announcing the extension.

Note: Some documents, such as birth certificates and Social Security cards, do not contain an expiration date and should be treated as unexpired.

18. Q. How can I tell if a DHS-issued document has expired?

A. Some DHS-issued documents, such as older versions of the Alien Registration Receipt Card (Form I-551), do not have expiration dates. However, all subsequent Permanent Resident Cards (I-551s) contain 2-year or 10-year expiration dates. Other DHS-issued documents, such as the Employment Authorization Document (Form I-766) also have expiration dates. These dates can be found either on the face of the document or on a sticker attached to the back of the document. All Employment Authorization Documents must be reverified upon expiration.

19. Q. Some employees are presenting me with Social Security cards that have been laminated. May I accept such cards as evidence of employment eligibility?

A. It depends. You may not accept a laminated Social Security card as evidence of employment eligibility if the card states on the back "not valid if laminated." Lamination of such cards renders them invalid. Metal or plastic reproductions of Social Security cards are not acceptable.

20. Q. Some employees have presented Social Security Administration printouts with their name, Social Security number, date of birth and their parents' names as proof of employment eligibility. May I accept such printouts in place of a Social Security card as evidence of employment eligibility?

A. No. Only a person's official Social Security card is acceptable.

21. Q. What should I do if an employee presents a Social Security card marked "NOT VALID FOR EMPLOYMENT," but states that he or she is now authorized to work?

A. You should ask the employee to provide another document to establish his or her employment eligibility, since such Social Security cards do not establish this. Such an employee should go to the local SSA office with proof of their lawful employment status to be issued a Social Security card without the "NOT VALID FOR EMPLOYMENT" legend.

22. Q. May I accept a photocopy of a document presented by an employee?

A. No. Employees must present original documents. The only exception is that an employee may present a certified copy of a birth certificate.

23. Q. I noticed on the Form I-9 that under List A there are two spaces for document numbers and expiration dates. Does this mean I have to see two List A documents?

A. No. One of the documents found in List A is an unexpired foreign passport with an attached DHS Form I-94 or I-94A, bearing the same name as the passport and containing endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer. The Form I-9 provides space for you to record the document number and expiration date for both the passport and the DHS Form I-94 or I-94A.

24. Q. When I review an employee's identity and employment eligibility documents, should I make copies of them?

A. If you participate in E-Verify and the employee presents a document used as part of the Photo Screening Tool (currently the Permanent Resident Card (Form I-551) and the Employment Authorization Document (Form I-766)), you must retain a photocopy of the document he or she presents. If you do not participate in E-Verify, you are not required to make photocopies of documents. However, if you wish to make photocopies of documents other than those used in E-Verify, you should do so for all employees, and you should retain each photocopy with Form I-9.Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of Form I-9, nor is it an acceptable substitute for proper completion of Form I-9 in general.

25. Q. When can employees present receipts for documents in lieu of actual documents establishing employment eligibility?

A. The "receipt rule" is designed to cover situations in which an employee is employment authorized at the time of initial hire or reverification, but he or she is not in possession of a document listed on page 4 of the Form I-9. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable.

An individual may present a receipt in lieu of a document listed on the Form I-9 to complete Section 2 of the Form I-9. The receipt is valid for a temporary period. There are three different documents that qualify as receipts under the rule.

1. A receipt for a replacement document when the document has been lost, stolen, or damaged. The receipt is valid for 90 days, after which the individual must present the replacement document to complete the Form I-9.

Note: This rule does not apply to individuals who present receipts for new documents following the expiration of their previously held document.

2. A Form I-94 or I-94A containing a temporary I-551 stamp and a photograph of the individual, which is considered a receipt for the Permanent Resident Card (Form I-551). The individual must present the Form I-551 by the expiration date of the temporary I-551 stamp, or within one year from the date of issuance of the Form I-94 or I-94A if the I-551 stamp does not contain an expiration date.

3. A Form I-94 or I-94A containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (i.e., Form I-766) or a combination of an unrestricted Social Security card and List B document. The employee must present acceptable documentation to complete the Form I-9 within 90 days after the date of hire or, in the case of reverification, the date employment authorization expires. For more information on receipts, see Table 1 in Part 2, Section 2.

26. Q. My employee has applied for a new Employment Authorization Document. When my employee's current Employment Authorization Document expires, how can I satisfy Form I-9 reverification requirement while the application is pending with USCIS? Is the USCIS receipt notice (Form I-797) covered by Form I-9 receipt rule?

A. An employee with temporary employment authorization and holding an Employment Authorization Document (I-766) should apply for a new card at least 90 days prior to the expiration of his or her current document DHS regulations provide that if it does not adjudicate the application for employment authorization within 90 days, it will grant an interim Employment Authorization Document valid for a period not to exceed 240 days. If your employee applied for a new card at least 90 days prior to the expiration of his or her current card but is nearing the end of the 90-day processing period without a decision from USCIS, instruct your employee to inquire about an interim Employment Authorization Document with the local USCIS office or by calling the National Customer Service Center at (800) 375-5283 or (800) 767-1833 (TTY). Upon expiration of your employee's current Employment Authorization Document, he or she should be able to present either a new or interim card, or a List C document, to satisfy Form I-9 reverification requirements. In this case, the USCIS receipt notice (Form I-797) is not an acceptable receipt for Form I-9 purposes.

27. Q. My employee has presented a foreign passport with a Form I-94 or I-94A (List A, Item 5) indicating an employment-authorized nonimmigrant status. How do I know if this nonimmigrant status authorizes the employee to work?

A. You, as the employer, likely have submitted a petition to USCIS on a nonimmigrant worker's behalf. However, there are some exceptions to this rule:

1.You made an offer of employment to a Canadian passport holder who entered the United States under NAFTA with an offer letter from your company.This nonimmigrant worker will have a Form I-94 or Form I-94A indicating TN status, and may present either a passport or a valid Canadian driver's license in combination with Form I-94 or Form I-94A.

2.A student working in on-campus employment or participating in curricular practical training.(See questions 28 and 29.)

3.A J-1 exchange visitor.(See question 34.)

Most employees who present a foreign passport in combination with a Form I-94 or I-94A (List A, Item 5) are restricted to work for their petitioning employer.If you did not submit a petition for an employee who presents such documentation, then that nonimmigrant worker is not usually authorized to work for you.

The table below lists the nonimmigrant classifications that indicate that an employee is authorized to work incident to status.Such classifications will be indicated on Form I-94 or I-94A

Classification	Description
A-1, A-2	Foreign Government Officials or employees of A-1 or A-2
A-3	Employee of an A-1, A-2
E-1, E-2, E-3	Treaty Trader/Investors
G-1, G-2, G-3, G-4	Foreign representatives or officers of an international organization
G-5	Employee of a G-1, G-2, G-3, or G-4
H-1B	Specialty Occupations, DOD workers
H-1C	Nurses in health professional shortage areas
H-2A	Temporary agricultural workers
H-2B	Temporary workers: skilled and unskilled
H-3	Trainees
J-1	Exchange visitors
L-1	Intra-company transfers
NATO-1 to NATO-6	Representatives to NATO
NATO-7	Employee of NATO representative
P-1	Individual or team athletes, entertainment groups, or artists
Q-1	International cultural exchange visitors
R-1	Religious workers

TN	NAFTA Trade visas for Canadians or Mexicans

28. Q. What document(s) can I accept from an employee who has applied for an extension of Optional Practical Training as a STEM student?

A**.** The expired Employment Authorization Document (Form I-766), the USCIS receipt notice showing a timely filing of the STEM extension application (Form I-797, Notice of Action) and a Form I-20 updated to show that the Designated School Official (DSO) has recommended the extension. This combination of documents satisfies Form I-9 requirements for 180 days (or less if the application for extension is denied beforehand).If the 17-month STEM extension is approved, the student should receive a new card reflecting the extension within the 180-day period.

29. Q. My employee is an F-1 student who was working for me as part of her Optional Practical Training. I have now submitted a petition on her behalf for an H-1B visa. Her Employment Authorization Document has expired and I must reverify her employment authorization. What documents may she present?

A. The expired Employment Authorization Document (Form I-766), combined with a Form I-20 endorsed to show that the student's employment authorization is still valid, and the USCIS receipt notice (Form I-797, Notice of Action), showing receipt of the H-1B petition.This combination of documents satisfies Form I-9 requirements until September 30 of each year, or until the date the petition is rejected, denied, or withdrawn. If the receipt notice has not yet been issued, the expired card and Form I-20 are sufficient. This combination of documents satisfies Form I-9 until the expiration date noted on the Form I-20, but not later than September 30.If the student presents Form I-20 without a receipt notice, the employer must reverify upon the expiration date noted on the Form I-20.The student may present another Form I-20 indicating continued employment authorization to satisfy the reverification requirement.

30. Q. My employee's Employment Authorization Document (Form I-766), expired and the employee now wants to show me a Social Security card. Do I need to see a current DHS document?

A. No. During both initial verification and reverification, an employee must be allowed to choose what documentation to present from Form I-9 lists of acceptable documents. If an employee presents an unrestricted Social Security card upon reverification, the employee does not also need to present a current DHS document.However, if an employee presents a restricted Social Security card upon reverification, you must reject the restricted Social Security card, since it is not an acceptable Form I-9 document, and ask the employee to choose different documentation from List A or List C of Form I-9.

31. Q. Can DHS double-check the status of an alien I hired, or "run" his or her number (typically an Alien Number or Social Security number) and tell me whether it's good?

A. DHS cannot double-check a number for you, unless you participate in E-Verify, which confirms the employment authorization of your newly hired employees. For more information about this program, see Part Six. You may also call DHS at 1-888-464-4218 or visit www.dhs.gov/E-Verify. You also may contact DHS if you have a strong and articulable reason to believe documentation may not be valid, in which case ICE may investigate the possible violation of law.

32. Q. My employee presented me with a document issued by INS rather than DHS. Can I accept it?

A. Effective March 1, 2003, the functions of the former INS were transferred to three agencies within the new DHS: USCIS, CBP and ICE. Most immigration documents acceptable for Form I-9 use are issued by USCIS. Some documents issued by the former INS before March 1, 2003, such as Permanent Resident Cards, may still be within their period of validity. If otherwise acceptable, a document should not be rejected because it was issued by INS rather than DHS. It should also be noted that INS documents may bear dates of issuance after March 1, 2003, as it took some time in 2003 to modify document forms to reflect the new USCIS identity.

33. Q. What should I do if an employee presents a Form I-20 and says the document authorizes her to work?

A. Form I-20 is evidence of employment authorization in two specific situations:

1.The employee works on the campus of the school where he or she is an F-1 student for an employer that provides direct student services, or at an off-campus location that is educationally affiliated with the school's established curriculum or related to contractually funded research projects at the post-graduate level where the employment is an integral part of the student's educational program.

2.The employee is an F-1 student who has been authorized by the Designated School Official (DSO) to participate in a curricular practical training program that is an integral part of an established

curriculum (e.g., alternative work/study, internship, cooperative education, or other required internship offered by sponsoring employers through cooperative agreements with the school).Form I-20 must be endorsed by the DSO for curricular practical training, and list the employer offering the practical training, and the dates the student will be employed.

In both situations, Form I-20 must accompany a valid Form I-94 or I-94A indicating F-1 status. When combined with a foreign passport, the documentation is acceptable for List A of Form I-9.

34. Q. May I accept Form DS-2019 as proof of employment authorization?

A. Form DS-2019 can be used only by a J-1 exchange visitor for employment when such employment is part of his or her program. For J-1 students, the Responsible Officer of the school may authorize employment in writing. The Form DS-2019 must accompany a valid Form I-94 or I-94A. When combined with a foreign passport, the documentation is acceptable for List A of Form I-9.

Questions about Completing and Retaining the Form I-9

35. Q. When do I fill out the Form I-9 if I hire someone for less than three business days?

A. You must complete both Sections 1 and 2 of Form I-9 at the time of the hire. This means the Form I-9 must be fully completed when the person starts to work.

36. Q. What should I do if I rehire a person who previously filled out a Form I-9?

A. If the employee's Form I-9 is the version dated June 5, 2007 or a subsequent version, you rehire the person within three years of the date that the Form I-9 was originally completed, and the employee is still authorized to work, you may reverify the employee in Section 3 of the original Form I-9.

If you used a version of the Form I-9 dated before June 5, 2007 when you initially verified the employee, you must complete a new Form I-9 upon rehire.

37. Q. What should I do if I need reverify a Form I-9 for an employee who filled out an earlier version of the form?

The current version of Form I-9 can be found at www.uscis.gov. To reverify an employee who filled out an earlier version of the form, you may line through any outdated information on the form and initial and date any updated information. You may also choose, instead, to complete a new Form I-9.

If you used a version of Form I-9 when you originally verified the employee that is no longer valid, the employee must provide any document(s) he or she chooses from the current Lists of Acceptable Documents, which you must enter in Section 3 of the current version of Form I-9.

38. Q. Do I need to complete a new Form I-9 when one of my employees is promoted within my company or transfers to another company office at a different location?

A. No. You do not need to complete a new Form I-9 for employees who have been promoted or transferred.

39. Q. What do I do when an employee's employment authorization expires?

A. You will need to reverify on the Form I-9 to continue to employ the person. Reverification must occur no later than the date that work authorization expires. The employee must present a document from either List A or List C that shows either an extension of his or her initial employment authorization or new work authorization. You must review this document and, if it reasonably appears on its face to be genuine and to relate to the person presenting it, record the document title, number, and expiration date (if any), in the Updating and Reverification Section (Section 3), and sign in the appropriate space.

If the version of the Form I-9 that you used for the employee's original verification is no longer valid, you must complete Section 3 of the current Form I-9 upon reverification and attach it to the original Form I-9.

You may want to establish a calendar call-up system for employees whose employment authorization will expire in the future.

You may not reverify an expired U.S. passport or passport card, or an Alien Registration Receipt Card/Permanent Resident Card (Form I-551) or a List B document that has expired.

NOTE: You cannot refuse to accept a document because it has a future expiration date. You must accept any document (from List A or List C) listed on the Form I-9 and in the Appendix of this Handbook that on its face reasonably appears to be genuine and to relate to the person presenting it. To do otherwise could be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.

If an employee's employment authorization document expires before the employee receives a new one, the employee may take the application receipt to a local USCIS office to receive temporary employment authorization IF it has been more than 90

days since the employee applied for the new card.

40. Q. Can I avoid reverifying an employee on the Form I-9 by not hiring persons whose employment authorization has an expiration date?

A. You cannot refuse to hire persons solely because their employment authorization is temporary. The existence of a future expiration date does not preclude continuous employment authorization for an employee and does not mean that subsequent employment authorization will not be granted. In addition, consideration of a future employment authorization expiration date in determining whether an alien is qualified for a particular job may be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.

41. Q. As an employer, do I have to fill out all the Forms I-9 myself?

A. No. You may designate someone to fill out Forms I-9s for you, such as a personnel officer, foreman, agent or anyone else acting in your interest, such as a notary public. Please note that if someone else fills out Form I-9 on your behalf, they must carry out full Form I-9 responsibilities. For example, it is not acceptable for a notary public to view employment authorization and identity documents, but leave Section 2 for you to complete. The person who views an employee's authorization documents should also complete and sign Section 2 on your behalf. However, you are still liable for any violations of the employer sanctions laws.

42. Q. Can I contract with someone to complete Forms I-9 for my business?

A. Yes. You can contract with another person or business to verify employees' identities and work eligibility and to complete Forms I-9 for you. However, you are still responsible for the contractor's actions and are liable for any violations of the employer sanctions laws.

43. Q. I use a professional employer organization (PEO) that "co-employs" my employees. Am I responsible for Form I-9 compliance for these employees or is the PEO?

A. "Co-employment" arrangements can take many forms. As an employer, you continue to be responsible for compliance Form I-9 requirements.

If the arrangement into which you have entered is one where an employer-employee relationship also exists between the PEO and the employee (e.g., the employee performs labor or services for the PEO), the PEO would be considered an employer for Form I-9 purposes and:

1. The PEO may rely upon the previously completed Form I-9 at the time of the initial hire for each employee continuing employment as a co-employee of you and the PEO, or
2. The PEO may choose to complete new Forms I-9 at the time of co-employment.

If more co-employees are subsequently hired, only one Form I-9 must be completed by either the PEO or the client. However, both you and your PEO are responsible for complying with Form I-9 requirements, and DHS may impose penalties on either party for failure to do so. Penalties for verification violations, if any, may vary depending on:

1. A party's control or lack of control over Form I-9 process.
2. Size of the business
3. Good faith in complying with Form I-9 requirements.
4. The seriousness of the party's violation.
5. Whether or not the employee was an unauthorized alien,
6. The history of the party's previous violations and
7. Other relevant factors

44. Q. As an employer, can I negotiate my responsibility to complete Forms I-9 in a collective bargaining agreement with a union?

A. Yes. However, you are still liable for any violations of the employer sanctions laws. If the agreement is for a multi-employer bargaining unit, certain rules apply. The association must track the employee's hire and termination dates each time the employee is hired or terminated by an employer in the multi-employer association.

45. Q. What are the requirements for retaining Forms I-9?

A. If you are an employer, you must retain Forms I-9 for three years after the date employment begins or one year after the date the person's employment is terminated, whichever is later. If you are an agricultural association, agricultural employer, or farm labor contractor, you must retain Forms I-9 for three years after the date employment begins for persons you recruit or refer for a fee.

46. Q. Will I get any advance notice if a DHS or DOL officer wishes to inspect my Forms I-9?

A. Yes. The officer will give you at least 3 days (72 hours) advance notice before the inspection. If it is more convenient for you, you may waive the 3-day notice. You may also request an extension of time to produce the Forms I-9. The DHS or DOL officer will

not need to show you a subpoena or a warrant at the time of the inspection.

NOTE: This does not preclude DHS or DOL from obtaining warrants based on probable cause for entry onto the premises of suspected violators without advance notice.

Failure to provide Forms I-9s for inspection is a violation of the employer sanctions laws and could result in the imposition of civil money penalties.

47. Q. How does OSC obtain information necessary to determine whether an employer has committed an unfair immigration-related employment practice under the anti-discrimination provision of the INA?

A. OSC will notify you in writing about the initiation of all investigations, and requests in writing information and documents. If an employer refuses to cooperate, OSC can obtain subpoenas to compel production of the information requested.

48. Q. Do I have to complete Forms I-9 for Canadians or Mexicans who entered the United States under the North American Free Trade Agreement (NAFTA)?

A. Yes. You must complete Forms I-9 for all employees. NAFTA entrants must show identity and employment eligibility documents just like all other employees.

49. Q. If I acquire a business, can I rely on Forms I-9 completed by the previous owner/employer?

A. Yes. However, you also accept full responsibility and liability for all Forms I-9 completed by the previous employer relating to individuals who are continuing in their employment.

50. Q. If I am a recruiter or referrer for a fee, do I have to fill out Forms I-9 on persons whom I recruit or refer?

A. No, with 3 exceptions: Agricultural associations, agricultural employers, and farm labor contractors are still required to complete Forms I-9 on all individuals who are recruited or referred for a fee. However, all recruiters and referrers for a fee must still complete Forms I-9 for their own employees hired after November 6, 1986. Also, all recruiters and referrers for a fee are still liable for knowingly recruiting or referring for a fee aliens not authorized to work in the United States and must comply with federal anti-discrimination laws.

51. Q. Can I complete Section 1 of the Form I-9 for an employee?

A. Yes. You may help an employee who needs assistance in completing Section 1 of the Form I-9. However, you must also complete the "Preparer/Translator Certification" block. The employee must still sign the certification block in Section 1.

52. Q. If I am self-employed, do I have to fill out a Form I-9 on myself?

A. A self employed person does not need to complete Form I-9 on his or her own behalf unless the person is an employee of a business entity, such as a corporation or partnership, if the person is a business entity, he or she, and any authorized employees, will have to complete Form I-9.

53. Q. I have heard that some state employment agencies can certify that people they refer are eligible to work. Is that true?

A. Yes. State employment agencies may elect to provide persons they refer with a certification of employment eligibility. If one of these agencies refers potential employees to you with a job order or other appropriate referral form, and the agency sends you *a* certification within 21 business days of the referral, you do not have to check documents or complete a Form I-9 if you hire that person. However, you must review the certification to ensure that it relates to the person hired and observe the person sign the certification. You must also retain the certification as you would a Form I-9 and make it available for inspection, if requested. You should check with your state employment agency to see if it provides this service and become familiar with its certification document.

Questions about Avoiding Discrimination

54. Q. How can I avoid discriminating against certain employees while still complying with this law?

A. You should:

1. Treat employees equally when recruiting, hiring, and terminating employees, and when verifying employment eligibility and completing the Form I-9.

2. Allow all employees, regardless of national origin or immigration status, to choose which document or combination of documents they want to present from the list of acceptable documents on the back of the Form I-9. For example, an employer may not require an employee to present an employment authorization document issued by DHS if he or she chooses to present a driver's license and unrestricted Social Security card.

You should NOT:

1. Set different employment eligibility verification standards or require that different documents be presented by employees

because of their national origin or citizenship status. For example, employers cannot demand that non-U.S. citizens present DHS-issued documents like “green cards”.

2. Ask to see a document with an employee’s Alien or Admission Number when completing Section 1 of the Form I-9.

3. Request to see employment eligibility verification documents before hire or completion of the I-9 Form because someone looks or sounds “foreign,” or because someone states that he or she is not a U.S. citizen.

4. Refuse to accept a valid employment eligibility document, or refuse to hire an individual, because the document has a future expiration date.

5. Reverify the employment eligibility of a lawful permanent resident (“LPR”) whose “green card” has expired after the LPR is hired.

6. Request that, during reverification, an employee present a new unexpired employment authorization document. For reverification, employees are free to choose any document either from List A or from List C of the I-9 Form, including an unrestricted Social Security card.

7. Limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law, regulation, executive order, or federal, state or local government contract.

NOTE: On an individual basis, you may legally prefer a U.S. citizen over an equally qualified alien to fill a specific position, but may not adopt a blanket policy of always preferring citizens over non-citizens.

55. Q. Who is protected from discrimination on the basis of citizenship status or national origin under the anti-discrimination provision of the INA?

A. All U.S. citizens, permanent residents, temporary residents, asylees and refugees are protected from citizenship status discrimination, except for those lawful permanent residents who have failed to make a timely application for naturalization after they become eligible.

You cannot discriminate against any work-authorized individual in hiring, firing, or recruitment because of his or her national origin.

Similarly, all employment-authorized individuals are protected from document abuse.

56. Q. Can I be charged with discrimination if I contact DHS about a document presented to me that does not reasonably appear to be genuine and relate to the person presenting it?

A. No. An employer who is presented with documentation that does not reasonably appear to be genuine or to relate to the employee cannot accept that documentation. While you are not legally required to inform DHS of such situations, you may do so if you choose. However, DHS is unable to provide employment eligibility verification services to employers other than through its E-Verify program. Employers who treat all employees the same and do not single out employees who look or sound foreign for closer scrutiny cannot be charged with discrimination.

57. Q. I recently hired someone who checked the fourth box in the immigration status attestation section on Section 1 of Form I-9, indicating that he is an alien. However, he informed me that he does not have an employment authorization expiration date, which appears to be required by the form. What should I do?

A. Refugees and asylees, as well as some other classes of alien such as certain nationals of the Federated States of Micronesia, the Marshall Islands, and Palau, are authorized to work incident to status. Some such aliens may not possess an employment authorization document (I-766 or I-688B) issued by DHS, yet can still establish employment eligibility and identity by presenting other documentation, including a driver’s license and an unrestricted Social Security card or Form I-94 indicating their work-authorized status. Such individuals should write “N/A” in Section 1 next to the alien box. The refusal to hire work-authorized aliens because of their immigration status, or because they are unable to provide an expiration date on the Form I-9, may violate the anti-discrimination provision in the INA.

58. Q. What should I do if I have further questions regarding the INA’s anti-discrimination provision and the Form I-9 Verification Process?

A. Employers should call OSC’s employer hotline with questions:
1-800-255-8155
1-800-362-2735 (TDD); or
Visit the OSC website,
http://www.usdoj.gov/crt/osc/ , for more information.

59. Q. What if someone believes they have experienced discrimination under the INA’s anti-discrimination provision?

A. Call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) employee hotline:
1-800-255-7688
1-800-237-2515 (TDD); or

Visit the OSC website, http://www.usdoj.gov/crt/osc/ , for more information and to download a charge form.

60. Q. What if someone believes he or she has experienced discrimination under Title VII of the Civil Rights Act of 1964?

A. Call the Equal Employment Opportunity Commission (EEOC):
1-800-USA-EEOC
1-800-669-6820 (TTY); or
Visit EEOC's website at http://www.eeoc.gov.

Questions about Employees Hired Before November 6, 1986

61. Q. Does this law apply to my employees if I hired them before November 7, 1986?

A. No. You are not required to complete Forms I-9 for employees hired before November 7, 1986.

NOTE: This "grandfather" status does not apply to seasonal employees, or to employees who change employers within a multi-employer association.

62. Q. Will I be subject to employer sanctions penalties if an employee I hired before November 7, 1986, is an illegal alien?

A. No. You will not be subject to employer sanctions penalties for retaining an illegal alien in your workforce if the alien was hired before November 7, 1986. However, the fact that an illegal alien was on your payroll before November 7, 1986, does not give him or her any right to remain in the United States. Unless the alien obtains permission from DHS to remain in the United States, he or she is subject to apprehension and removal.

Questions about Different Versions of Form I-9

63. Q. Is Form I-9 available in different languages?

A. Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may use the Spanish version to meet the verification and retention requirements of the law. Employers in the 50 states may use the Spanish version as a translation guide for Spanish-speaking employees, but the English version must be completed and retained in the employer's records. Employees may also use or ask for a translator/preparer to assist them in completing the form.

61. Q. Are employers in Puerto Rico required to use the Spanish version of the Form I-9?

A. No. Employers in Puerto Rico may use either the Spanish or the English version of the June 5, 2007 or any subsequent version of the Form I-9 to verify new employees.

62. Q. May I continue to use earlier versions of the Form I-9?

A. No, employers must use the current version of Form I-9. All previous editions of the Form I-9, in English or Spanish, are no longer valid.

Part Eight
Acceptable Documents for Verifying Employment Eligibility

The following documents have been designated for determining employment eligibility by the Act. A person must present a document or documents that establish identity and employment eligibility. A comprehensive list of acceptable documents can be found on the next page of this Handbook and on the back of the Form I-9. Samples of many of the acceptable documents appear on the following pages.

To establish both identity and employment eligibility, a person can present a U.S passport, a Permanent Resident Card or Alien Registration Receipt Card, or one of the other documents from List A.

If a person does not present a document from List A, he or she must present one document from List B, which establishes identity, and one document from List C, which establishes employment eligibility.

To establish identity only, a person must present a document from List B, such as a state-issued driver's license, a state-issued identification card, or one of the other documents listed.

To establish employment eligibility only, a person must present a document from List C, such as a Social Security card, a U.S. birth certificate, or one of the other documents listed.

If a person is unable to present the required document(s) within three business days of the date employment begins, he or she must present (within 3 business days) a receipt. The person then must present the actual document when the receipt period ends. The person must have indicated on or before the time employment began, by having checked an appropriate box in Section 1 that he or she is already eligible to be employed in the United States. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable.

LIST A

Documents That Establish Both Identity and Employment Eligibility

1. U.S. Passport or Passport Card

2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)

3. Foreign passport that contains a temporary I-551 stamp or a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)

4. Employment Authorization Document (Card) that contains a photograph (Form I-766)

5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-95 or Form I-94A bearing the same name as the passport and containing 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.

6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands 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.

LIST B

Documents That Establish Identity

For individuals 18 years of age or older:

1. Driver's license or ID card issued by a state or outlying possessions of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address.

2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address

3. School ID card with a photograph

4. Voter's registration card

5. U.S. military card or draft record

6. Military dependent's ID card

7. U.S. Coast Guard Merchant Mariner Card

8. Native American tribal document

9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card

11. Clinic, doctor or hospital record

12. Day-care or nursery school record

LIST C

Documents That Establish Employment Eligibility

1. U.S. Social Security card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States.

NOTE: A copy (such as a metal or plastic reproduction) is not acceptable.

2. Certification of Birth Abroad issued by the Department of State (Form FS-545)

3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal

4. Native American tribal document

5. U.S. Citizen ID Card (USCIS Form 1-197)

6. Identification Card for Use of Resident Citizen in the United States (USCIS Form 1-179)

7. Employment authorization document issued by DHS (other than those listed under List A).

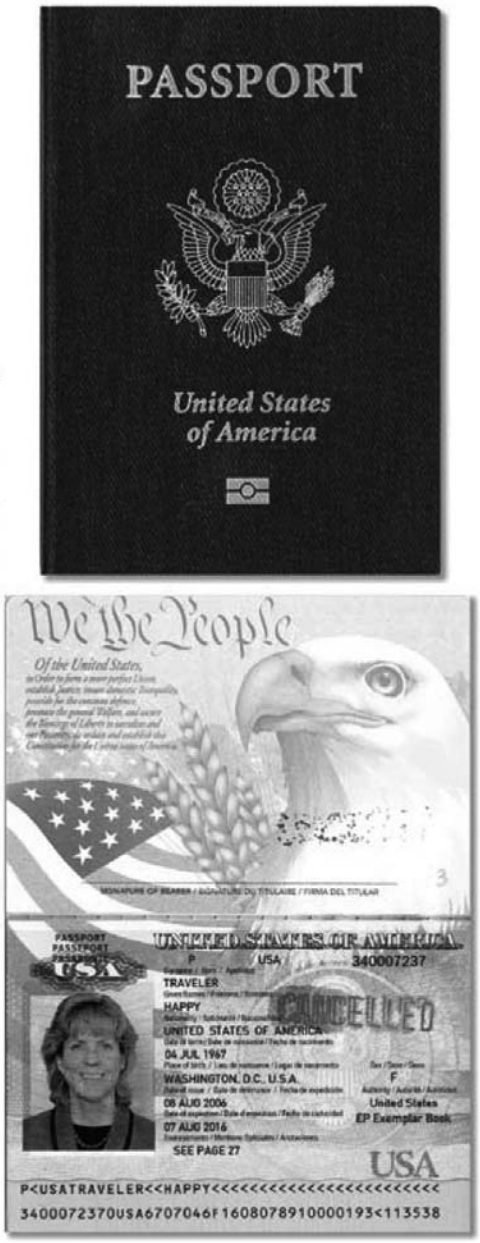
List A—Documents That Establish Both Identity and Employment Authorization

U.S. Passport

The U.S. Department of State issues the U.S. Passport to U.S. citizens and nationals. There are a small number of versions still in circulation that vary from the main versions shown here.

The following illustrations in this Handbook do not necessarily reflect the actual size of the documents.

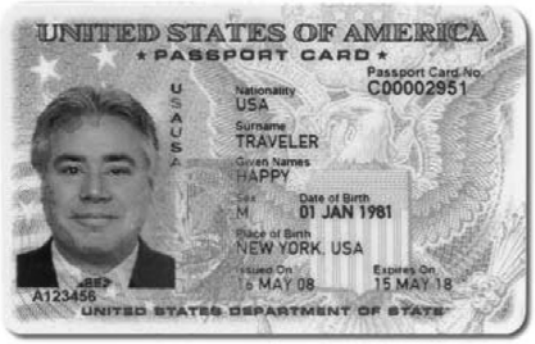
Current U.S. Passport cover and open



Older U.S. Passport cover and open

U.S. Passport Card

The U.S. Department of State began producing the passport card in July 2008. The passport card is a wallet-size card that can only be used for land and sea travel between the United States and Canada, Mexico, the Caribbean, and Bermuda.

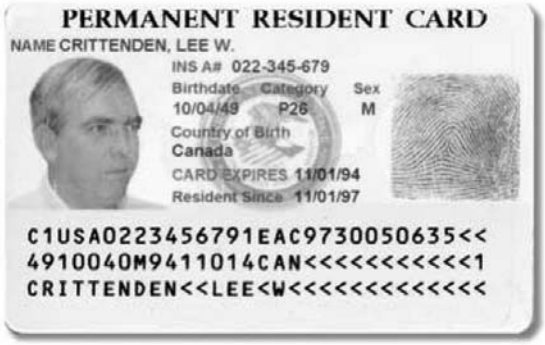


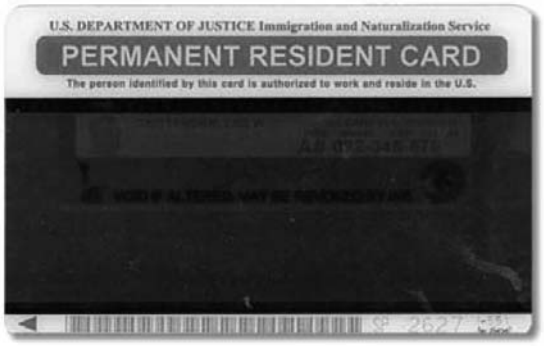
Passport Card front and back

Permanent Resident Card (Form I-551)

The Permanent Resident Card shows the DHS seal and contains a detailed hologram on the front of the card. Each card is personalized with an etching showing the bearer's photo, name, fingerprint, date of birth, alien registration number, card expiration date, and card number. Also in circulation are older Resident Alien cards, issued by the U.S. Department of Justice, Immigration and Naturalization Service, which do not have expiration dates and are valid indefinitely. These cards are peach and show the Department of Justice seal, and the bearer's fingerprint and photograph.

Current Permanent Resident Card (Form I-551) front and back





Older version Permanent Resident Card (Form I-551) front and back

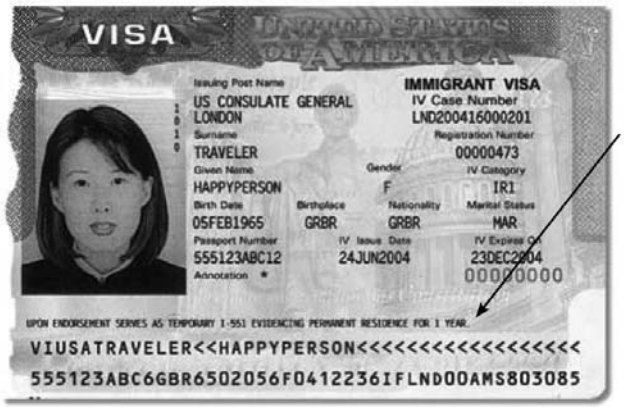
Foreign Passport With I-551 Stamp or MRIV

Unexpired Foreign Passport with I-551 Stamp

USCIS uses either a I-551 stamp or a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV) to denote temporary evidence of lawful permanent residency. Reverify the employee when the stamp or MRIV expires, or 1 year after the issuance date if the stamp or statement does not include an expiration date.

PROCESSED FOR I-551.
TEMPORARY EVIDENCE OF
LAWFUL ADMISSION FOR
PERMANENT RESIDENCE
VALID UNTIL_____.
EMPLOYMENT AUTHORIZED

I-551 Stamp

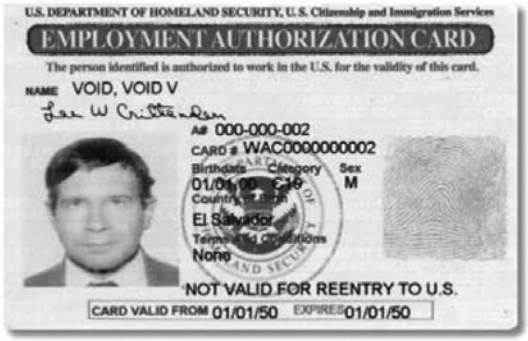


Upon endorsement serves as temporary I-551 evidencing permanent residence for 1 year

Temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)

Employment Authorization Document (Form I-766)

USCIS issues the Employment Authorization Document to aliens granted temporary employment authorization in the United States. The card contains the bearer's photograph, fingerprint, card number, Alien number, birthdate, and signature, along with a holographic film and the DHS seal. The expiration date is located at the bottom of the card.



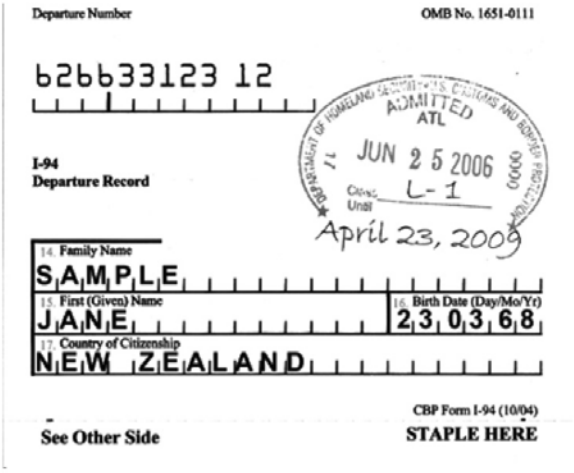
Employment Authorization Document (Form I-766) front and back

Form I-94/I-94A Arrival/Departure Record

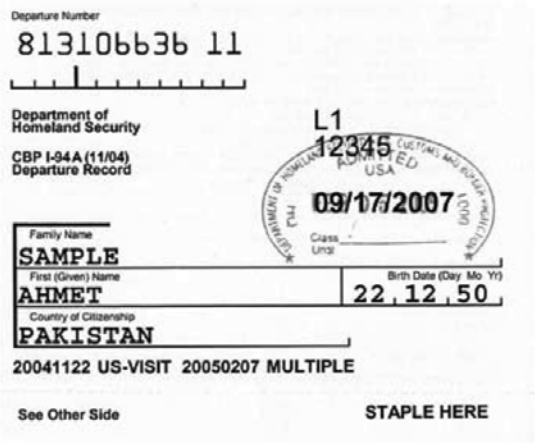
CBP issues an arrival-departure record to nonimmigrant aliens and other alien categories. This document indicates the bearer's immigration status, the date that the status was granted, and when the status expires. The immigration status notation within the stamp on the card varies according to the status granted, e.g., L-1, F-1, J-1. The Form I-94 has a handwritten date and status, and the Form I-94A has a computer-generated date and status.

Both may be presented with documents that Form I-9 specifies are valid only when Form I-94 or I-94A also is presented, such as the foreign passport, Form DS-2019, or Form I-20.

Form I-9 provides space for you to record the document number and expiration date for both the passport and Form I-94 or I-94A.



Form I-94 Arrival/Departure Record

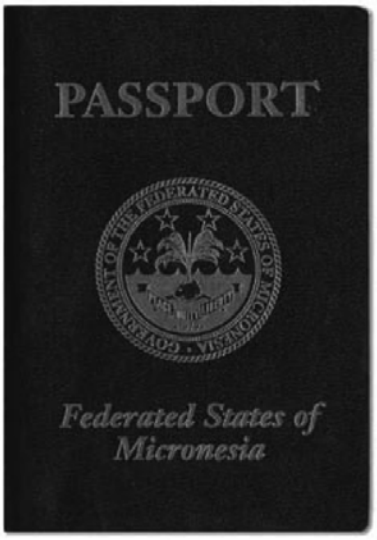


Form I-94A Arrival/Departure Record

Passports of the Federated States of Micronesia and the Republic of the Marshall Islands

In 2003, Compacts of Free Association (CFA) between the United States and the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) were amended to allow citizens of these countries to work in the United States without obtaining an Employment Authorization Document (Form I-766).

For Form I-9 purposes, citizens of these countries may present their passports accompanied by a Form I-94 or I-94A indicating nonimmigrant admission under the CFA. The exact notation on the Form I-94 or I-94A may vary and is subject to change, but as of early 2009 typically states "CFA/MIS" for an RMI citizen, and "CFA/FSM" for an FSM citizen.

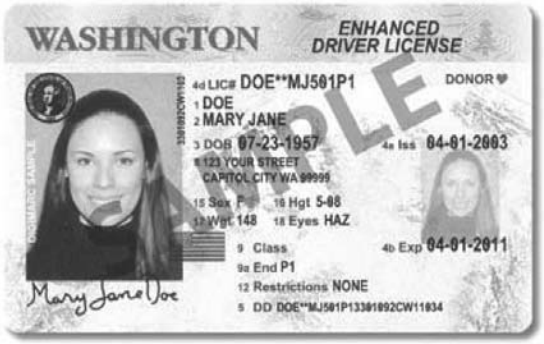


Passport from the Federated States of Micronesia

List B—Documents That Establish Identity Only

State-issued Driver's License

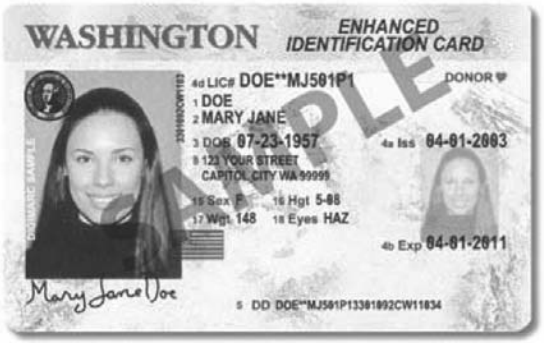
A driver's license can be issued by any State or territory of the United States (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands) or by a Canadian government authority, and is acceptable if it contains a photograph or other identifying information such as name, date of birth, gender, height, color of eyes, and address.



Driver's License front and back

State-issued ID Card

An ID card can be issued by any State (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands) or by a local government, and is acceptable if it contains a photograph or other identifying information such as name, date of birth, gender, height, color of eyes, and address.

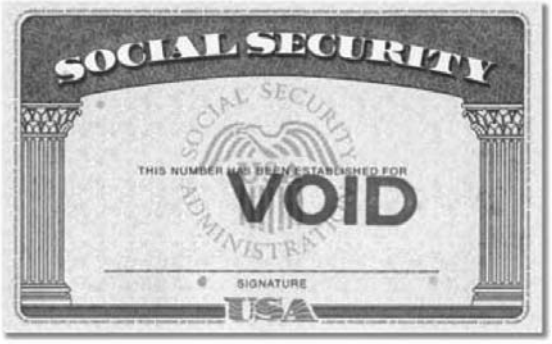


Identification Card front and back

List C—Documents That Establish Employment Authorization Only

U.S. Social Security Account Number Card

The U.S. Social Security account number card is issued by the Social Security Administration (older versions were issued by the U.S. Department of Health and Human Services), and can be presented as a List C document unless the card specifies that it does not authorize employment in the United States. Metal or plastic reproductions are not acceptable.



U.S. Social Security Card

Certification of Birth Abroad Issued by the U.S. Department of State

These documents may vary in color and paper used. All will include a raised seal of the office that issued the document, and may contain a watermark and raised printing.

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

Certification of Birth Abroad

of a Citizen of the United States of America

This is to certify that according to records on file in this Office

SAMPLE

Sex MALE was born at US NAVAL HOSPITAL, OKINAWA, JAPAN

on AUGUST 13, 1990 Report of birth recorded on SEPTEMBER 14, 1990

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the Consular Service of the United States of America at NAHA, JAPAN

this 14TH day of SEPTEMBER 19.90

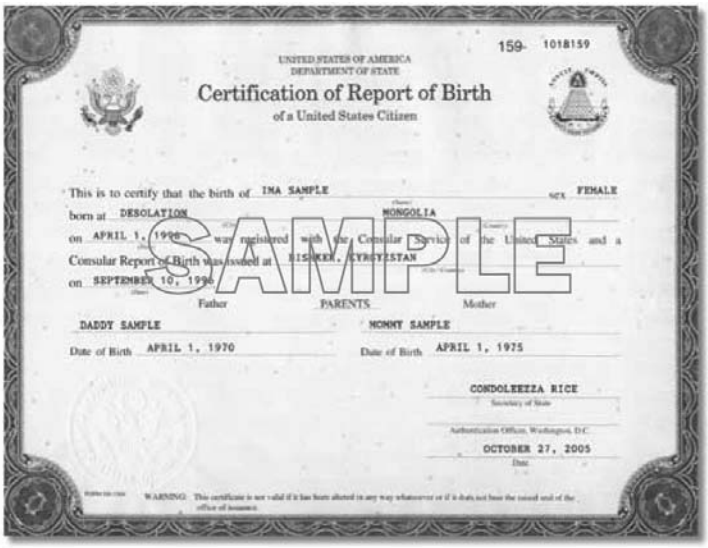
(SEAL)

CONSUL of the United States of America

WARNING: This certificate is not valid if it has been altered in any way whatsoever or if it does not bear the raised seal of the office of issuance.

Form FS-545

Certification of Birth Abroad Issued by the U.S. Department of State (FS-545)



159 1018159

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

Certification of Report of Birth
of a United States Citizen

This is to certify that the birth of INA SAMPLE sex FEMALE
born at DESOLATION MONGOLIA
on APRIL 1, 1998 was registered with the Consular Service of the United States and a
Consular Report of Birth was issued at BISHKEK, KYRGYZSTAN
on SEPTEMBER 10, 1998

Father PARENTS Mother

DADDY SAMPLE MOMMY SAMPLE

Date of Birth APRIL 1, 1970 Date of Birth APRIL 1, 1975

CONDOLEEZZA RICE
Secretary of State

Authentication Officer, Washington, D.C.
OCTOBER 27, 2005
Date

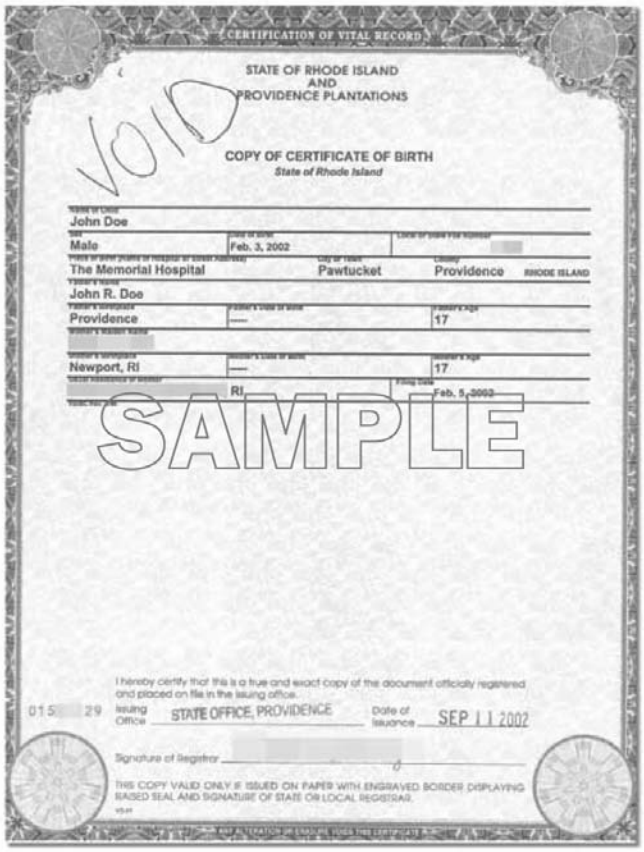
WARNING: This certificate is not valid if it has been altered in any way whatsoever or if it does not bear the raised seal of the office of issuance.

SAMPLE

Certification of Report of Birth Issued by the U.S. Department of State (DS-1350)

Birth Certificate

Only an original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States that bears an official seal. Versions will vary by state and year of birth.



CERTIFICATION OF VITAL RECORD

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

VOID

COPY OF CERTIFICATE OF BIRTH
State of Rhode Island

John Doe
Male | Feb. 3, 2002
The Memorial Hospital | Pawtucket | Providence | RHODE ISLAND
John R. Doe
Providence | ---- | 17
Newport, RI | ---- | 17
RI | Feb. 5, 2002

SAMPLE

I hereby certify that this is a true and exact copy of the document officially registered and placed on file in the issuing office.

015 29 Issuing Office STATE OFFICE, PROVIDENCE Date of Issuance SEP 11 2002

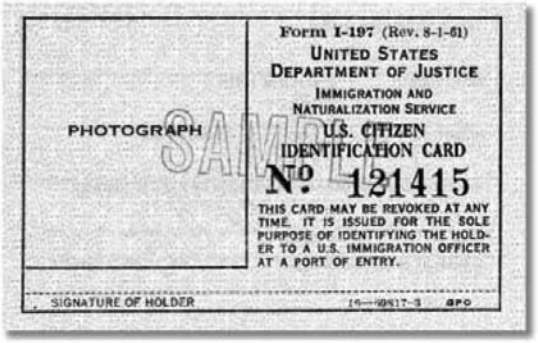
Signature of Registrar

THIS COPY VALID ONLY IF ISSUED ON PAPER WITH ENGRAVED BORDER DISPLAYING RAISED SEAL AND SIGNATURE OF STATE OR LOCAL REGISTRAR.

Birth Certificate

U.S. Citizen Identification Card (Form I-197)

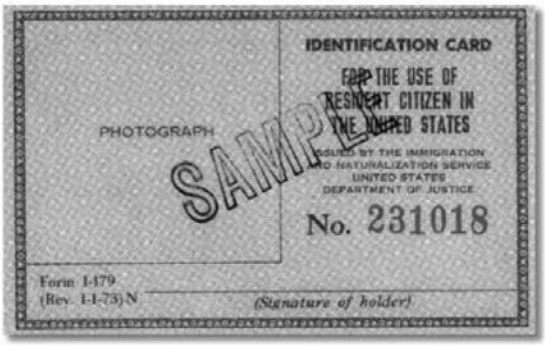
Form I-197 was issued by the former Immigration and Naturalization Service (INS) to naturalized U.S. citizens. Although this card is no longer issued, it is valid indefinitely.



U.S. Citizen Identification Card (Form I-197)

Identification Card for Use of Resident Citizen in the United States (Form I-179)

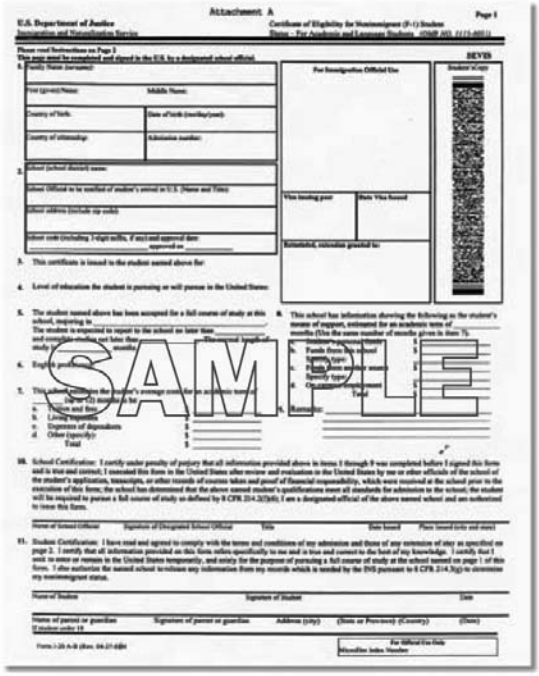
Form I-179 was issued by INS to U.S. citizens who are residents of the United States. Although this card is no longer issued, it is valid indefinitely.



Identification Card for Use of Resident Citizen in the United States (Form I-179)

Form I-20 Certificate Accompanied by Form I-94 or I-94A

Form I-94 or I-94A for F-1 nonimmigrant students must be accompanied by a Form I-20 Student ID endorsed with employment authorization by the Designated School Official for off-campus employment or curricular practical training. USCIS will issue an Employment Authorization Document (Form I-766) to all students (F-1 and M-1) authorized for a post-completion practical training period. **(See page 48 for Form I-94/I-94A)**



Form I-20 Certificate Accompanied by Form I-94 or I-94A

Form DS-2019 Accompanied by Form I-94 or I-94A

Nonimmigrant exchange visitors (J-1) must have a Form I-94 or I-94A accompanied by an unexpired Form DS-2019, issued by the U.S. Department of State, that specifies the sponsor. J-1 exchange visitors working outside the program indicated on the Form DS-2019 also need a letter from their responsible school officer. **(See page 48 for Form I-94/I-94A)**

U.S. Department of State
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS
J-1
Sample

Form DS-2019 Accompanied by Form I-94 or I-94A

REMEMBER:

a. Hiring employees without complying with the employment eligibility verification requirements is a violation of the employer sanctions laws.

b. This law requires employees hired after November 6, 1986, to present documentation that establishes identity and employment eligibility, and employers to record this information on Forms I-9.

c. Employers may not discriminate against employees on the basis of national origin or citizenship status.

No Match Regulations

No-Match Regulations

******On August 31, 2007, the U.S. District Court for the Northern District of California issued a temporary restraining order in AFL-CIO, et al. v. Chertoff, et al. (N.D. Cal. Case No. 07-CV-4472 CRB). The temporary restraining order against the Department of Homeland Security and the Social Security Administration enjoins and restrains those agencies from implementing the Final Rule entitled "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter."***

*[**EDITOR'S NOTE:** at the time of publication, the fate of the Final Rule is still pending. A decision regarding the implementation of the Supplemental Final Rule is expected to be released by the end of March 2009]*

Every year, the Social Security Administration (SSA) informs thousands of employers via a "no-match" letter that certain employees' names and corresponding Social Security numbers provided on Forms W-2 do not match SSA's records. Out of approximately 250 million wage reports the SSA receives each year, as many as four percent belong to employees whose names and corresponding Social Security numbers do not match SSA's records.

Through regulation, the Department of Homeland Security (DHS) is reiterating that employers remain accountable for the workers they hire and clarifying the steps employers should take to resolve mismatches identified in letters issued by SSA. The DHS regulations provide guidance that will help employers comply with legal hiring requirements by outlining specific steps they should take under immigration law when they are notified that employees' names or corresponding Social Security numbers as provided on Forms W-2 do not match SSA records.

There are many reasons for a mismatch between employer and SSA records, including transcription errors and name changes due to marriage that are not reported to SSA. Employers should not assume that the mismatch is the result of any wrongdoing on the part of the employee. Moreover, an employer who takes action against an employee based on nothing more substantial than a mismatch letter may, in fact, violate the law.

SSA is not changing its procedures for issuing employer no-match letters, and SSA guidance on how to correct Social Security records is unchanged. However, employers who receive a SSA No-Match letter in 2007 will also receive a DHS/ICE letter. This DHS/ICE letter will provide additional guidance regarding what procedures an employer should follow upon the receipt of SSA No-Match letters to achieve safe harbor, precluding the use by DHS of receipt of the No-Match letter to establish constructive knowledge of knowingly hiring or continuing to hire unauthorized workers.

The employer should take reasonable steps to resolve the No-Match, and apply these steps uniformly to all employees listed in the SSA letter. It is possible that a No-Match was the result of a clerical error on the part of the employee, the employer or the government. DHS/ICE considers the following to be reasonable steps if the employer:

1) Promptly (no later than 30 days) checks its records to ensure that the mismatch was not the result of an error on the part of the employer.

2) If this does not resolve the problem, asks the employee to confirm the accuracy of the employer's records.

3) If necessary, the employer should ask the employee to resolve the issue with SSA. The employer should inform in order to give the employee as much time as possible to resolve the matter and inform the employee that the employee has 90 days from the date the employer received the No-Match letter to resolve the matter with SSA (explaining that resolution of the mismatch could take time).

4) If the employer was able to successfully resolve the mismatch, the employer should ensure that of the instructions in the SSA letter have been followed. The employer should also verify that the error has been corrected by using the Social Security Number Verification Service (SSNVS) administered by SSA, and retain a record of the date and time of verification. SSNVS can be accessed through http://www.socialsecurity.gov/employer/ssnv.htm or by telephone at 1-800-772-6270.

5) If none of the foregoing measures resolves the matter within 90 days of receipt of the No-Match letter, the employer should complete, within three days, a new I-9 Form as if the employee in question were newly hired, except that no document may be used to verify the employee's authorization for work that uses the questionable Social Security number. Additionally, the employee must present a document that contains a photograph in order to establish identity or both identity and employment authorization.

If the employer cannot confirm that the employee is authorized to work (by following the above procedures), the employer risks liability for violating the law by knowingly continuing to hire unauthorized workers.

Sample DHS Letter included with No-Match Letter

Immigration and Customs Enforcement
U.S. Department of Homeland Security
Washington, DC 20536

Dear Employer:
The purpose of this letter is to provide you with additional guidance on how to respond to the enclosed letter from the Social Security Administration (SSA) in a manner that is consistent with your obligations under United States immigration laws.

You are now aware that the Social Security numbers you have provided on W-2 Forms for certain employees do not match SSA's records. Many employers that receive this information are concerned about how to respond appropriately, and whether the receipt of such information implicates an employer's obligations under the Immigration and Nationality Act. This letter will answer the common questions arising from this situation.

Q: Can I simply disregard the letter from SSA?

A: No. You have received official notification of a problem that may have significant legal consequences for you and your employees. If you elect to disregard the notice you have received and if it is determined that some employees listed in the enclosed letter were not authorized to work, the Department of Homeland Security (DHS) could determine that you have violated the law by knowingly continuing to employ unauthorized persons. This could lead to civil and criminal sanctions.

Q: What should I do?

A: **You should take reasonable steps to resolve the mismatch**, and apply these reasonable steps uniformly to all employees listed in the enclosed SSA letter. It is possible that a mismatch was the result of a clerical error on the part of the employee, the employer or the government. You should:

1) Promptly (no later than 30 days) check your records to ensure that the mismatch was not the result of an error on your part.

2) If this does not resolve the problem, ask your employee to confirm the accuracy of your records.

3) If necessary, ask the employee to resolve the issue with SSA.

4) If you were able to successfully resolve the mismatch, make sure you have followed all of the instructions in the enclosed SSA letter. You should also verify that the correction has been made by using the Social Security Number Verification System (SSNVS) administered by SSA, and retain a record of the date and time of your verification. SSNVS can be accessed through http://www.socialsecurity.gov/employer/ssnv.htm or by telephone at 1-800-772-6270.

5) If none of the foregoing measures resolves the matter within 90 days of receipt of this letter, you should complete, within three days, a new I-9 Form as if the employee in question were newly hired, except that no document may be used to verify the employee's authorization for work that uses the questionable Social Security number and no document may be used to verify the employee's identity that does not have a photograph of the employee.

Page 2

If you cannot confirm that the employee is authorized to work (by following the above procedures), you risk liability for violating the law by knowingly continuing to employ unauthorized persons.

Q: Does receiving a mismatch letter, standing alone, indicate that I ought to terminate the employees whose numbers did not match SSA records?

A: There are many reasons for a mismatch between employer and SSA records, including transcription errors and name changes due to marriage that are not reported to SSA. Employers should not assume that the mismatch is the result of any wrongdoing on the part of the employee. Moreover, an employer who takes action against an employee based on nothing more substantial than a mismatch letter may, in fact, violate the law.

Q: Will I be liable for discrimination charges brought by the United States if I terminate the employee after following the steps outlined above?

A: No. An employer that receives such a letter and terminates employees without attempting to resolve the mismatches, or who treats employees differently based upon national origin or other prohibited characteristics, may be found to have engaged in unlawful discrimination. However, if an employer that follows all of the procedures outlined by DHS in this letter (and http://www.ice.gov) cannot determine that an employee is authorized to work in the United States, and therefore terminates that employee, and if that employer applied the same procedures to all employees referenced in the mismatch letter, then that employer will not be subject to suit by the United States under the Immigration and Nationality Act's anti-discrimination provision.

If you have any additional questions, please visit http://www.ice.gov for extensive information or feel free to contact the Immigration and Customs Enforcement Office of Investigations at 1-800-421-7105.

Sample SSA No-Match Letter

Social Security Administration
Retirement, Survivors and Disability Insurance
Employer Correction Request CODE V

Office of Central Operations
300 N. Greene Street
Baltimore, MD 21290-0300
Date:
EIN:

EMPLOYER'S NAME
STREET ADDRESS
CITY, STATE ZIP

Establishment Number: MRN: WFID:

Why You Are Getting This Letter

Some employee names and Social Security numbers that you reported on the Wage and Tax Statements (Forms W-2) for tax year 2006 do not agree with our records. We need corrected information from you so that we can credit your employees' earnings to their Social Security records. It is important because these records can determine if someone is entitled to Social Security retirement, disability and survivors benefits, and how much he or she can receive. If the information you report to us is incorrect, your employee may not get benefits he or she is due.

There are several common reasons why the information reported to us does not agree with our records, including:

- Errors were made in spelling an employee's name or listing the Social Security number;
- An employee did not report a name change following a marriage or divorce;
- The name or Social Security number was incomplete or left blank on the Form W-2 report sent to the Social Security Administration; and
- The name or Social Security number reported is false, or the number was assigned to someone else.

IMPORTANT: This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or Social Security number. Nor does it, by itself, make any statement about an employee's immigration status.

See Next Page

You should not use this letter alone to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her Social Security number appears on the list. Doing so could, in fact, violate State or Federal law and subject you to legal consequences. You should, however, follow the instructions contained in the attached document, “How To Correct Social Security Numbers” and the attached letter from the Department of Homeland Security. You should apply the procedures provided in these letters uniformly to all employees. You should not ignore this letter and do nothing. That could jeopardize your employee's future benefits and, as the Department of Homeland Security has advised us, expose you to liability under the immigration laws.

For Spanish-speaking individuals: Esta carta y los documentos adjuntos proveen información sobre las acciones que usted debe de tomar para corregir algunos de los nombres y números de Seguro Social que informó en los Comprobantes de Contribuciones y Salarios (formularios W-2, "Wage and Tax Statement", en inglés) de sus empleados. Si usted necesita una traducción de esta carta, por favor llámenos al número de teléfono gratis, 1-800-772-1213, de 7 a.m. a 7 p.m. de lunes a viernes.

IMPORTANTE: Esta carta no implica que usted o su empleado dieron al gobierno la información incorrecta del nombre o número de Seguro Social del empleado intencionalmente. Tampoco hace, por sí misma, ninguna declaración sobre el estado inmigratorio de un empleado.

Usted no debe usar sólo esta carta para tomar alguna acción adversa contra el empleado, tal como suspender, despedir o discriminar contra el individuo, simplemente porque su número de Seguro Social aparece en la lista. De hecho, de hacerlo, podría violar la ley estatal o federal y estar sujeto a enfrentar consecuencias legales. No obstante, usted debe seguir las instrucciones contenidas en el documento adjunto, "Cómo corregir los números de Seguro Social" y la carta del Departamento de Seguridad Nacional adjunta. Usted debe aplicar los procedimientos enumerados en estas cartas uniformemente a todos sus empleados. Usted no debe ignorar esta carta ni dejar de tomar acción sobre ella. Eso puede comprometer el futuro de los beneficios del empleado y como el Departamento de Seguridad Nacional nos ha informado, exponerlo a usted a cargos bajo la ley de inmigración.

What You Should Do

It would be a great help to us if you could respond within 60 days with the information that you are able to correct so that the Social Security Administration can maintain an accurate earnings record for each employee and make sure your employees get the benefits they are due.

We have attached some materials to help you:

- A list of the Social Security numbers that do not match our records. (If the list shows you have "MORE" Social Security numbers to correct than listed, please call us at 1-800-772-6270 for assistance.)
- Instructions on "How To Correct Social Security Numbers."
- Tips on "Annual Wage Report Filing" for the future.

If You Have Any Questions

If you have any questions, about this letter, please call us toll-free at 1-800-772-6270 between 7 a.m. and 7 p.m., Eastern Time, Monday through Friday. We can answer most questions over the phone. You can also write us at the address shown on the first page of this letter. If you call, please have this letter with you. It will help us answer your questions. Also, general program information is available from our website at www.socialsecurity.gov/employer. If you have questions about the Department of Homeland Security letter, you should call 800-421-7105.

Carolyn L. Simmons
Associate
Commissioner for
Central Operations

Enclosure

SOCIAL SECURITY NUMBERS THAT DO NOT MATCH OUR RECORDS

000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000
000-00-0000	000-00-0000	000-00-0000	000-00-0000

How to Correct Social Security Numbers (SSNs)

Complete Forms W-2c (Corrected Wage and Tax Statement) for each of the Social Security numbers (SSNs) listed that you are able to correct. You only need to prepare Forms W-2c for the names or SSNs for which you have corrected information. If an employee does not provide corrected information or no longer works for you and you are unable to contact him/her, document your records with the information you relied on in completing the Form W-2 or the efforts you made to contact your former employee. Retain this information in your files; do not send it to the Social Security Administration (SSA.) You should provide all corrections as soon as possible.

You also need to file a Form W-3c (Transmittal of Corrected Wage and Tax Statements) whenever you file Forms W-2c.

Please follow the guidelines below when preparing Forms W-2c.

- Refer to the Internal Revenue Service (IRS) filing requirements in its publication, "Instructions for Forms W-2c and W-3c," at the IRS website www.irs.gov or call 1-800-829-3676 to request a copy.

- Compare your employment records to the Forms W-2 you reported for the SSNs included on the attached list.

- If your employment records and Forms W-2 do not match, prepare Forms W-2c with the corrected information from your employment records. (Do not send copies of proofs of identity or other documents in addition to, or in place of, the Forms W-2c.)

- If your employment records and Forms W-2 match, ask your employee to check his/her Social Security card and to inform you of any name or SSN difference between your records and his/her card. If your employment records are incorrect, correct your records.

- If your records match the information on the employee's Social Security card, have the employee contact any Social Security office to resolve the issue. Tell the employee that once he/she has visited the

Social Security office he/she should inform you of any changes and you should correct your records accordingly.

- SSA may also send the employee a notice regarding this issue. You should discuss with the employee any changes you make to your employment records.

- If you file your Form W-2c corrections electronically, call SSA at 1-800-772-6270 to request a copy of the "Magnetic Media Reporting and Electronic Filing of W-2c Information (MMREF-2)" or you can download the MMREF-2 at SSA's website, www.socialsecurity.gov/employer.

- You may also file your Form W-2c corrections using W-2c Online. W-2c Online is one of several Business Services Online (BSO) Internet services for businesses and employers who exchange information with the Social Security Administration.

To begin using BSO, you must complete a one-time registration process. To register, go to www.socialsecurity.gov/bso/bsowelcome.htm.

  - We suggest using AccuW2C to identify possible MMREF-2 formatting errors. You can download AccuW2C from the Internet at: www.socialsecurity.gov/employer/accuwage

- If you file paper Forms W-2c, you can get them from the Internal Revenue Service. Paper Forms W-2c should be sent to one of the following addresses:

  If you use the **U.S. Postal Service**, send the forms to:
  Social Security Administration
  Data Operations Center
  Attention: W-2c Process
  P.O. Box 3333
  Wilkes-Barre, Pennsylvania 18767-3333

If you use a **carrier other than the U.S. Postal Service**, send the forms to:
Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Tips on Annual Wage Report Filing

Why Accurate Names and SSNs are Important

Accurate names and SSNs are important to you and your employees for several reasons. We use the name and SSN to maintain a record of personal earnings for each of your employees. Generally, we are not able to give an employee credit for his or her earnings unless the name and SSN reported on the Form W-2 agree with our records. It is most important that these records are correct since we later use them to decide if the individual can receive Social Security benefit payments and the amount of any payments due.

Filing Tips To Ensure Accuracy

Before you file your next annual wage report, please make sure your employment records and the Forms W-2 you report have your employees' correct names and SSNs. Use the tips below to ensure accuracy.

- We encourage you to use SSA's Employee Verification Service (EVS) prior to submitting Forms W-2 to SSA for processing. EVS is a free, convenient and secure method for employers to verify that employee names and SSNs match SSA's records. EVS is not to be used to screen job applicants. A negative EVS response makes no statement about your employee's immigration status. Visit our website at www.socialsecurity.gov/employer and select SSN Verification or call toll-free 1-800-772-6270 for further details.

- Ask your employees to check their latest Forms W-2 against their Social Security cards and to inform you of any name or SSN differences on the two. If the Form W-2 is incorrect, correct your records and prepare a Form W-2c. If the card is incorrect, advise the employee to request a corrected card from the nearest Social Security office.

- Remind your employees near the end of each year to report to Social Security name changes due to marriage, divorce or other reasons.

- Ask each new employee to check his or her Social Security card and inform you of the name and SSN exactly as shown on the card. (While the employee must furnish the SSN to you, the employee is not required to show the Social Security card. But, seeing the card will help ensure that all records are correct.)

- Direct those who do not have SSNs or cards to contact their nearest Social Security office.

- Ensure that the SSNs you report are valid. A valid SSN must have a total of nine digits. The first three digits are referred to as the area, the next two as the group, and the last four as the serial. No SSNs with a 000 area number, or an area number in the 800 or 900 series, have been issued. Also, no SSNs with a 00 group or 0000 serial number have been issued.

- If you file electronically, be sure that all of your employees' names are correctly entered in the appropriate fields of the Code RW "Employee Wage Record."

  For more information see SSA Publication "Magnetic Media Reporting and Electronic Filing (MMREF-1)."

- If you file on paper, be sure to enter your employees' names on the Forms W-2 as follows: first name, middle initial, and last name exactly as shown on their Social Security cards. See IRS Publication 393, "Federal Employment Tax Forms."

For IRS forms or publications, call 1-800-TAX-FORM (829-3676), or visit IRS' website at www.irs.gov.

For SSA forms or publications, call SSA's Employer 800 Number, 1-800-772-6270, or visit SSA's website at www.socialsecurity.gov/employer.