

April 28, 2020

**Employers Must Start Using New Form I-9 on May 1**

Provided by the U.S. Citizenship and Immigration Services agency (hereinafter USCIS), the Form I-9 is used to “verify the identity and employment authorization of individuals hired for employment in the United States.”<sup>1</sup> All U.S. employers must complete and retain such form so long as the individual hired works for pay or other type of payment.<sup>2</sup> On October 21, 2019 the Office of Management and Budget approved a new version of the Form I-9. Employers may use the revised form immediately, but they ***must use the new Form I-9 no later than May 1, 2020.***

***Changes to Form I-9.*** USCIS has made several subtle changes to Form I-9.<sup>3</sup>

- **Revisions to Form I-9 Instructions:**
  - Clarified who may act as an authorized representative on behalf of an employer.
    - An authorized representative may be *any* person that the employer so designates.
  - The instructions also provide further clarification on acceptable documents on Form I-9.
    - After entering information in the List A column on the Form I-9, the employer should not put “N/A” under the List B or List C columns. Rather, Lists B and C should be left blank. However, if the Form is completed on a computer, Lists B and C will automatically be populated. Alternatively, if the employer fills out Lists B and C, the employer may leave List A blank.
    - The Form now explicitly states that the Employment Authorization Document (Form I-766) is not a List C document.
  - Several USCIS website addresses have been updated.
  - The Form I-9 instructions now provide a website address to request paper copies of the Form I-9.
    - Such website may be found at: <https://www.uscis.gov/forms/forms-by-mail>.
  - Updated the USCIS Privacy Act Statement to the DHS Privacy Notice.
- **Revisions related to Country of Issuance on Form I-9**
  - The Country of Issuance field in Section 1 and the Issuing Authority field, when selecting a foreign passport, in Section 2 now offer the countries of Eswatini and Macedonia, North. This change was necessary due to the change in the names of each respective country.

<sup>1</sup> <https://www.uscis.gov/i-9>.

<sup>2</sup> <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/who-needs-form-i-9/who-needs-form-i-9>.

<sup>3</sup> <https://www.uscis.gov/i-9-central/whats-new/whats-new>.

- As this change is reflected in the drop-down menu on the Form I-9, such change is only visible when completing the fillable Form I-9 on a computer.

The easiest way to check the I-9 Form version is by examining the “revision date” printed on the bottom left of the form. The previous version of the form, released in July 2017, will contain a notation on the bottom left of the page informing you that the document was created on “07/17/17 N.” The new version now states “10/21/2019.”

**COVID-19 and Form I-9 Compliance.** The Department of Homeland Security has announced that the physical presence requirements associated with the I-9 have been deferred. If an employer is currently taking physical proximity precautions due to the virus, the employer does not have to review the employee’s identify and employment authorization documents in the employee’s physical presence. However, the Section 2 documents must still be inspected remotely, whether it be by video, email, etc. and employers must inspect, obtain, and retain these documents within three business days. These documents must be physically inspected once normal operations resume.<sup>4</sup>

**Timing.** Beginning May 1, 2020, the revised Form I-9 is the only I-9 that can be used by employers. Employers who continue to use prior versions of the form after April 30, 2020 may be subject to certain penalties.

**Revised Form I-9.** The revised Form I-9 is available at the USCIS website: <https://www.uscis.gov/i-9>.

**Revised Handbook.** The Form I-9 changes can also be found in the newly revised Handbook for Employers: Guidance for Completing Form I-9 (M-274), located at: <https://www.uscis.gov/i-9-central/handbook-employers-m-274>. The handbook provides guidance on completing the Form I-9 and has been updated to make navigation easier.

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<sup>4</sup> <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>.