



Questions and Answers

National Stakeholder Teleconference on the Revised Form I-9 May 7, 2013

The following is a transcript of the questions received during the May 7, 2013, National Stakeholder Teleconference on the Form I-9, as well as USCIS' response to those questions. Questions from stakeholders are indicated in quotes and are shown exactly as they were received.

1. **"Are there changes to the process for documenting the Form I-9 when an H-1B employee is working based on a receipt based on the application being submitted?"**

Answer: There are no changes to the previous M-274. An H-1B employee who is changing employers within the H-1B program may begin working for you as soon as you file a Form I-129 petition on his or her behalf. You do not have to wait for a receipt, but you should have proof that you filed a Form I-129 for an extension, of payment for filing, and that you mailed the Form I-129.

2. **"Can you clarify if the executive summary is still accurate for the March 11, 2013 Revised Form I-9 Teleconference?"**

Answer: The executive summary has been posted at www.uscis.gov/Outreach located under *Notes from Previous Engagements*. It is still accurate.

3. **"If an employee filled out the previous Form I-9 do they need to fill out the new Form I-03/08/13 N?"**

Answer: The employee that began filling in the previous Form I-9 prior to May 7, 2013 is not required to complete the new version.

- 4. “My university is a corporation that electronically stores the Forms I-9. Since it is Electronic, we use a new Form I-9 for reverification. Do we use the first date of employment, the original hire date?”**

Answer: If the employer chooses to complete a new Form I-9 for reverification, only Section 3 of the new Form I-9 along with the employee’s name at the top of the page should be completed. Section 2 of the new Form I-9 should not be completed. Maintain the new Form I-9 with the original Form I-9.

- 5. “Is it incorrect to complete a new Form I-9 since there is a new version?”**

Answer: Yes. You should not complete a new Form I-9 for current employees who already have a Form I-9 on file. The new version only needs to be completed for new hires and reverifications.

- 6. “For List A documents a foreign passport and the Form I-94, if the I-94 has an expiration date, do you need to document the Form I-20 and Form I-797?”**

Answer: The answer depends on the basis for the F-1 nonimmigrant student’s work authorization, such as on-campus employment or curricular practical training. However, in no case is Form I-797 a document that needs to be recorded on Form I-9. Please refer to pages 16 to 21 of the *Handbook of Employers* (M-274).

- 7. “A general contractor hires many subcontractors and we have to have copies of the Form I-9 for the subcontractors. Do you have a stand on employers sending their employee’s information between contractor and subcontractor?”**

Answer: As this matter is between private parties, we are not taking a position on this practice.

- 8. “If I hire a subcontractor, it is my understanding that I am legally able to get the Person’s Form I-9?”**

Answer: We are unable to give you legal advice on the actions between private business entities. There is no requirement under the Form I-9 rules and regulations for a subcontractor to show the Forms I-9 of its employees to another private entity.

- 9. “What is your opinion on software programs that process the Form I-9 through their cloud service?”**

Answer: We are unable to provide an opinion on business decisions for your corporate structure. USCIS does provide a fillable electronic Form I-9.

10. “Since the grace period is over what if store managers send me completed Forms I-9 on the old form. Is there a grace period?”

Answer: The period during which the old form could still have been used is over as of today (5/7/13) and the only acceptable Form I-9 is version 03/08/13 N.

11. “Do rehires need to complete a new Form I-9 or is the old one sufficient?”

Answer: For rehires the employer should review the previously completed Form I-9. If the individual is still eligible to work, you should update Section 3 of the old form with the rehire date. You are not required to complete a new Form I-9. If the employee’s employment authorization has expired, you must reverify the employee’s employment authorization in Block C of Section 3 of the new version of Form I-9.

12. “The first day of employment is confusing when we could hire an employee on 1 April and they do not start work until 1 May. Do we put down the date they start working or the date when we actually hired them?”

Answer: The employee’s first day of employment is the first day of services or labor for wages or other remuneration.

13. “The Last and First Name field on Section 2 is getting missed. What identifies Page 2 to Page 1?”

Answer: You can photo copy Pages 1 and 2 front to back on one page or staple the pages together. It is the name of the employee that identifies page 2 to page 1, so it is important not to miss the Last and First Name field on Section 2.

14. “Can an authorized agent that did not originally complete the Form I-9 write the name on the top of Page 2?”

Answer: Yes, it is acceptable for a different employer agent to write in the name on Page 2. The person correcting page 2 should initial and date the correction.

15. “Are we required to put N/A in the ‘Other Names Used’ field? Explain may versus must?”

Answer: N/A is not required in the Other Names field but we encourage the use of N/A when appropriate. When the Form I-9 Instruction states must N/A is required in the field.

16. “If the employee misses an N/A in Other Names Field is that a technical violation?”

Answer: That would be a question for ICE. In general, voluntary fields left blank are not considered violations.

17. “Can an employer assist the employee in getting their electronic I-94 from the web site?”

Answer: Please refer your question to CBP. The electronic I-94 is available on a public web site. You can assist your employee with his or her consent. However, given the personal information on the web site, we encourage employees to obtain their Forms I-94 themselves.

18. “Is the date format literally mm/dd/yyyy or is 5/7/2013 acceptable?”

Answer: That is acceptable. Our suggested formatting for the date is to encourage employers to use the standard American date format.

19. “We have several electronic Forms I-9 that we can no longer use and it is inconvenient having to do a new Form I-9.”

Answer: Only the new version of Form I-9 is currently acceptable.

20. “Are employees going to know how to get their I-94?”

Answer: Yes, Custom and Border Patrol (CBP) will provide the individual with information upon entry that provides instructions on obtaining their I-94.

21. “We currently make copies of employee’s documents but would like to stop. Can we do this?”

Answer: You do not have to continue making copies as long as you stop making copies for all new hires and reverifications moving forward. It is best to document the change in policy in writing.

22. “Can someone help me if I do not know the different documents used for Section 2 of the Form I-9?”

Answer: Yes. Document information and descriptions are located at the USCIS Web site at www.uscis.gov/I-9Central, or questions can be handled via email at I-9Central@dhs.gov or call our Customer Contact Center at 1-888-464-4218, Monday - Friday 8:00 a.m. - 4:00 p.m.

23. “If an employee starts to work today do I have 3 days to E-Verify?”

Answer: Yes. A case should be created in E-Verify after completion of Form I-9 no later than 3 days after an employee begins work for pay.

24. “We do not have to keep the hard copies if we scan and save the documents?”

Answer: Yes, that is correct.

25. “How do we define the first date of hire if we meet them at the airport and they begin receiving benefits?”

Answer: The date of “hire” is the commencement of employment for wages or other remuneration. “Employment” means any service of labor performed by an employee for an employer within the United States. You should apply these definitions to determine what the date of hire is in your particular situation. See the regulatory definitions at 8 CFR 274A.1 for more detailed information.

26. “When the employer has filed to get an extension for a P-1 and documents on their Form I-9 have expired, what do we use to show the employee is allowed to work?”

Answer: After timely submitting the Form I-129, Petition for a Nonimmigrant Worker requesting an extension of the employee’s status, the employee is authorized to work while the petition is being processed for a period not to exceed 240 days or until USCIS denies your petition, whichever comes first. Write ‘240-Day Ext.’ on Form I-9 and enter the date you submitted the Form I-129 to USCIS in the margin of Section 2. Complete Section 3 with the I-94 number and expiration date once you receive a decision on the petition or by the end of the 240-day period whichever comes first. See page 23 of the *Handbook for Employers* (M-274) for more information.

27. “Is an I-9 required for nonpaid individuals? They do not receive anything.”

Answer: No Form I-9 is required if no remuneration of any kind is received in exchange for their services or labor.

28. “Can a temporary staffing agency E-Verify the employee the day they fill out the Form I-9 or when they start?”

Answer: The employer may create a case in E-Verify as soon as the Form I-9 is complete.

29. “Do we need to have the employee go back and fill in all the blank fields with N/A on their completed Form I-9?”

Answer: N/A is not a required field in all cases. You can ask an employee to correct Section 1 of the Form I-9 if appropriate. The employee should initial and date any such corrections made.

30. “Is it a technical violation to fill in the name later on Section 2?”

Answer: Please contact ICE for questions regarding violations. Filling in the employee’s name in Section 2 by the employer or employer’s representative at a later time would be considered a correction. The person correcting Section 2 must initial and date the correction.

31. “If during an audit I find the wrong version of the Form I-9 was filled out, should they complete a new Form I-9?”

Answer: Yes. Attach the new Form I-9 to the previously completed Form I-9. We suggest that you also attach a written explanation (signed and dated) explaining what happened.

32. “My employee has had 3 name changes. Do I fill out a new Form I-9 or fill out Section 3?”

Answer: Complete Section 3 of their Form I-9 to update a legal name change. Complete Section 3 of a new Form I-9 if Section 3 is already used and attach it to the employee’s original Form I-9. Please see page 23 of the *Handbook for Employers* (M-274) for more detailed information regarding the steps employers should take in case of a name change.

33. “Are there fines and legal risk associated with pre-population of fields in the Form I-9?”

Answer: Section 1 must be completed by the employee. The employer’s name and address in Section 2 may be prepopulated. Please refer your question to ICE for a more detailed response.

34. “Should a change of address be documented on the Form I-9?”

Answer: Updating address information on Form I-9 is not required.

35. “If a lawful permanent resident presents a photo ID and an unrestricted social security card can you ask to see their green card?”

Answer: No, you cannot. Employment authorization is based on the documentation provided to you by the employee. If the documents that your employee presents reasonably appear to be genuine and to relate to the employee, then you must accept the documents. You cannot ask an employee to present more or specific documents.

36. “States with Real ID driver’s license are providing a driver’s license that is punched with a paper stating the Real ID will be issued within 30 days. Is the driver’s license void and do I need the piece of paper?”

Answer: If the driver’s license is unexpired and contains a photograph or identification information, it is acceptable for Form I-9 purposes. You do not need the piece of paper to complete Section 2.

37. “There is a place for visa number in E-Verify but not on the Form I-9. Is it required?”

Answer: No, inputting the visa number into E-Verify is optional.

38. “Requesting clarification on the date format mm/dd/yyyy. Is it a technical violation to use a military format, 07May13, for the date?”

Answer: We prefer the use of the 05/07/2013 date format, but as long as the date can be clearly understood, a military format is acceptable.

39. “Can an employer pre-populate their address in the Certification Section of Section 2, on the Form I-9?”

Answer: Yes, the employer’s business name and business address can be pre-populated in Section 2.

40. “Are there any reference guides on documents and more specifically citizenship documents?”

Answer: Yes. On our web site www.uscis.gov/I-9Central under the *Acceptable Documents* link, “*Who is issued this document?*” there is a matrix which shows the acceptable documents for Lists A, B, and C of the Form I-9.

41. “If the Form I-9 is complete, how do you run a case in E-Verify for an employee who has a future hire date? Do you date ahead?”

Answer: Creating a case in E-Verify is contingent on the Form I-9 being complete. Employers can enter an anticipated start date in E-Verify as the hire date; future dates are acceptable.

42. “Can I accept a Social Security card and a receipt if they are not going to get their card for 2 weeks?”

Answer: A receipt for the application for a replacement lost, stolen or damaged document is valid for 90 days from the date of hire. The actual document must be presented to the employer by the end of the 90 day period.

43. “E-Verify has a field for Maiden Name and the Form I-9 has a field for Other Names Used. Do I put the maiden name in E-Verify?”

Answer: The previous versions of Form I-9 included a Maiden Name field. In the current version, this field was replaced with the more general phrase, “Other Names Used.” An employee’s maiden name is not required in E-Verify but maybe entered.

44. “When you use a PRC for Form I-9 and E-Verify, are we allowed to write the card number on the Form I-9?”

Answer: When completing Form I-9, a Lawful Permanent Resident (LPR) is required to provide an Alien Registration Number/USCIS Number in Section 1. If the LPR then provides a Permanent Resident Card as a List A document to complete Section 2, the employer can record the card number in Section 2 of Form I-9. The card number may begin with three letters, such as “SRC,” and can be found on the back of the card. With respect to earlier versions of the Permanent Resident Card, the employer can record the A number in Section 2 of Form I-9. On earlier versions of the Permanent Resident Card, “card number” is not identified.

45. “If an employee’s H-1B status changes to a green card are they required to fill out a new Form I-9 or do I reverify?”

Answer: When the “authorized to work until” date is reached in Section 1, or the expiration date (if any) of an employment authorization document presented in Section 2 or Section 3 has been reached, you need to conduct reverification with respect to the employee.

46. “After completing a quick audit I found Forms I-9 that were completed 8-9 years ago with errors. Should I have the employee fill in missing information?”

Answer: If the employee made an error or did not fill in required fields in Section 1, have them make a correction and initial and date that section on the original Form I-9. Also, it may be helpful to prepare a written explanation of what happened and keep the explanation with the original Form I-9.

47. “Since some of the I-94s are being issued electronically can I hire someone if they have not printed out the I-94?”

Answer: Whether someone has printed out Form I-94 is not a relevant consideration when making hiring determinations. Within three days after beginning work for pay, your employee must present documentation from the Lists of Acceptable Documents. If your employee wishes to present Form I-94 for Section 2, he or she must present Form I-94 in paper format. If your employee was issued Form I-94 electronically, he or she can print-out a paper version of Form I-94 from any computer with internet access to CBP’s web site.

48. “If an employee is located in a different state than the employer, do you need to see a physical copy of their documents? Is a Notary acceptable as an employer’s representative?”

Answer: The employer or the employer’s authorized representative must attest to physically examining the documents provided. Physical examination of the employee’s original documents must be done in the presence of the employee. A notary is an acceptable representative.

49. “Is an Enhanced driver’s license acceptable as a List B document for Section 2 of the Form I-9?”

Answer: Yes, the Enhanced driver’s license is an acceptable List B document.

50. “An employee provided a Social Security card that has ‘VALID FOR WORK ONLY WITH DHS AUTHORIZATION.’ What is required with this Social Security card?”

Answer: This restricted Social Security card is not acceptable for Form I-9 and, therefore, should not be recorded on the form. Instead, the employee must be given an opportunity to present a different document, choosing from the Lists of Acceptable Documents.

51. “Does an employee need to fill out a new Form I-9 and the employer run a new case in E-Verify if an employee transfers location?”

Answer: As long as a new hire has not taken place, a new Form I-9 is not required and an E-Verify case should not be created. 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. DHS regulations provide that an individual is continuing in his or her employment if the individual transfers locations of the same employer. Employers should not create a case in E-Verify for existing employees.

52. “Should the paper Form I-9 be stored with medical records or stored with the employee’s personnel file?”

Answer: That is a business decision for the employer to make. Regardless of where the employer stores its Forms I-9, the law requires that the employer make the forms available upon request by authorized government officers after being provided three days’ notice prior to an inspection.

53. “Are visiting foreign doctors at universities and hospitals who shadow doctors required to fill out a Form I-9? The visiting doctors pay their own way and receive nothing from the employer.”

Answer: The Form I-9 requirement applies if the individual provides labor or services in exchange for pay or other remuneration. If the doctors receive nothing of value from the hospital or university then Form I-9 is probably not required.

54. “Do I need to reverify Form I-9 List B and List C documents? Do I need to update name changes?”

Answer: List B documents establish identity and never require reverification. Reverification is required if the List C employment authorization document expires. Name changes are not necessary to note on Form I-9 except during the course of a rehire or reverification, but we encourage employers to keep the Form I-9 up to date.

55. “What if they do not have an email address or telephone number for Section 1 of the Form I-9?”

Answer: The email address and telephone number fields in Section 1 are not required fields, so they can enter N/ANSWER:

56. “The employer provides individuals housing when they perform a service. Are they required to fill out a Form I-9?”

Answer: Yes, a Form I-9 is required since you are providing them housing, which is considered remuneration, in exchange for their services.

57. “My employer has home based employees. Can you provide guidance on how to appoint someone on our behalf?”

Answer: The person must be the employer’s authorized representative. We cannot provide legal advice on how the employer may appoint someone to be its authorized representative.

58. “Does it make a difference if we keep the Form I-9 on site or off site?”

Answer: Either is permissible. An employer has 3 days to provide the Forms I-9 after receiving a notice of inspection from authorized government officials.

59. “My corporation has 8 companies and some have federal contracts with the E-Verify clause. My vision is to use E-Verify for all employees.”

Answer: You may use E-Verify for all new hires of all eight companies. You may choose to use E-Verify for all existing employees of the companies that are contractors under a federal contract with the E-Verify clause. For more information, see pages 18-19 of the *Supplemental Guide for Federal Contractors*.

60. “Many of our farm workers cannot write. We complete Section 1 for them and complete the Preparer and/or Translator Certification section, is this correct?”

Answer: Yes, that is correct. However, these workers must sign or mark the employee attestation in Section 1.

61. “Do seasonal workers need a new Form I-9 or can we use Section 3 as rehires? [Question by a State Workforce Agency (SWA)]”

Answer: Please forward your specific circumstances via email to I-9Central@dhs.gov to SWA attention and we will assist you.

62. “Is the Social Security number required for the Form I-9? We require a Social Security number to pay our employees.”

Answer: An employee is not required to provide a Social Security number for Section 1 of the Form I-9 unless the employer participates in E-Verify.

63. “We hire students for 3 to 4 summers. Can we continue to use Section 3 of the Form I-9 for rehires?”

Answer: Section 3 can be used for rehires if the rehire is within 3 years of the date the Form I-9 was originally completed. A new Form I-9 is required when the rehire date is more than 3 years from the date the Form I-9 was originally completed. For seasonal employees, a hire is not deemed to have taken place if the employees are deemed to be continuing in their employment and have a reasonable expectation of employment at all times. In such case, a new Form I-9 is not required, Section 3 of the original Form I-9 need not be completed, but the employer must ensure that reverification, if necessary, was timely completed.

64. “Requesting clarification in regards to recertification and rehiring. Should I complete a new Form I-9 the newer version? For a rehire do I recertify by completing Section 3 of the new form and attach it to the old form?”

Answer: Employers must use the new form for both new hires and reverification beginning 03/08/13. If reverification of employment authorization is not required for the rehire, then the old Form I-9 may be used to record the rehire date. If reverification is necessary, use Section 3 of the new version of Form I-9. You should attach the new Form I-9 to a previously completed Form I-9. The *Handbook for Employers*, M-274, Completing Section 3, pages 23-26 covers reverification and rehires in detail.

65. “Can employees from the Commonwealth of the Northern Mariana Islands (CNMI) use a driver’s license?”

Answer: Yes, a CNMI driver’s license is acceptable.

66. “As a staffing agency we cannot accept documents such as Social Security cards, driver’s license or passports via email or fax?”

Answer: Correct. The individual signing the Certification in Section 2 of the Form I-9 must physically see the original documents.

67. “The employee and employer began filling out the Form I-9 and then it is put on hold due to the hire date is in 30-90 days. How do we complete it in 3 business days?”

Answer: You have 3 business days from the date of hire (i.e., commencement of labor or services in exchange for remuneration) to complete Section 2 of the Form I-9. If Section 2 is completed after the employee accepts the job offer but before he or she will begin employment for wages or other remuneration, enter the date the employee expects to begin such employment. If the employee begins employment on a different date, cross out the expected start date and write in the correct start date. Date and initial the correction.

68. “Can we retain the Form I-9 after 3 years?”

Answer: The Form I-9 retention rules only require you to retain Forms I-9 no longer than 3 years after the date of hire or 1 year after the date employment is terminated, whichever is later. There are no rules regarding retaining forms beyond the required retention period.

69. “Can the apartment number field in Section 1 of the Form I-9 be left blank?”

Answer: Yes, you can leave this field blank.

70. “American Indians employment authorization do not expire on the I-94. Do I need to ask for another document if their driver’s license expires?”

Answer: No, reverification of an identity document is not required.

71. “An employee was hired before 1986 and then retired. He has returned to work, does he need to be run through E-Verify?”

Answer: The employee is a new hire and he needs to complete a Form I-9. You may thereafter create a case in E-Verify.

72. “If an employer types the paper form into the electronic system do we fill in the Preparer Certification of Section 1 and sign it?”

Answer: Yes, that is correct.

73. “Do we need to copy the front and back of documents for Form I-9 purposes?”

Answer: Yes, if you choose to copy documents that all of your employees present when completing Form I-9, unless the back of the document is blank.