

Part Seven

Some Questions You May Have About Form I-9

Employers should read these questions and answers carefully. They contain valuable information that, in some cases, is not found elsewhere in this Handbook.

Questions About the Verification Process

1. Q. Do citizens and noncitizen nationals of the United States need to complete Form I-9?

- A.** Yes. While citizens and noncitizen 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 the United States, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. U.S. noncitizen nationals are persons who owe permanent allegiance to the United States, which include those born in American Samoa, including Swains Island.

NOTE: Citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) are not noncitizen nationals.

2. Q. Do I need to complete Form I-9 for employees working in the CNMI?

- A.** Yes. You need to complete Form I-9 for employees hired for employment in the CNMI on or after November 27, 2011. Employers in CNMI should have used Form I-9 CNMI between November 28, 2009 and November 27, 2011. If the employer did not complete Form I-9 CNMI as required during this period the employer should complete a new Form I-9 as soon as the employer discovers the omission. You should not complete Form I-9 for any employees already working for you on November 27, 2009, even if you assign them new job responsibilities within your company. For more information on federal immigration law in the CNMI, go to www.uscis.gov/CNMI.

3. Q. If someone accepts a job with my company but will not start work for a month, can I

complete Form I-9 when the employee accepts the job?

- A.** Yes. The law requires that you complete Form I-9 only when the person actually begins working for pay. 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 Form I-9 process to screen job applicants.

4. 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 may not use a contract, subcontract or exchange to obtain the labor or services of an employee knowing that the employee is unauthorized to work.

5. Q. May I fire an employee who fails to produce the required documents within three business days of his or her start date?

- A.** Yes. You may terminate an employee who fails to produce the required document or documents, or an acceptable receipt for a document, within three business days of the date employment begins.

6. Q. What happens if I properly complete and retain 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 individual, unless the government can show you had knowledge of the unauthorized status of the employee.

Questions about Documents

7. Q. May I specify which documents I will accept for verification?

- A. No. The employee may 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 Form I-9 and found in Part Eight 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. For more information relating to discrimination during the Form I-9 process, contact OSC at 1-800-255-8155 (employers) or 1-800-237-2515 (TDD) or visit OSC's website at www.justice.gov/crt/osc.

NOTE: An employer participating in E-Verify can only accept a List B document with a photograph.

8. Q. If an employee enters an Alien Number or Admission Number when completing Section 1 of Form I-9, may 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.

9. 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.

10. 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.

11. Q. Why was documentation for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) added to the Lists 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. An amendment to the Compacts eliminated the need for citizens of these two countries to obtain Employment Authorization Documents (Forms I-766) to work in the United States. However, FSM and RMI citizens may also apply for Employment Authorization Documents (Forms I-766) if they wish, or present a combination of List B and List C documents. The List A document specific to FSM and RMI citizens is a valid FSM or RMI passport with a Form I-94/Form I-94A indicating nonimmigrant admission under one of the Compacts.

12. Q. How do I know whether a Native American tribal document issued by a U.S. tribe presented by my employee is acceptable for Form I-9 purposes?

- A. In order to be acceptable, a Native American tribal document should be issued by a tribe recognized by the U.S. federal government. Because federal recognition of tribes can change over time, to determine if the tribe is federally recognized, please check the Bureau of Indian Affairs website at www.bia.gov.

13. Q. The Native American tribal document is listed on both List B and List C of Form I-9. Does this mean that my employee may present this document to prove both identity and employment authorization?

- A.** If an employee presents a Native American tribal document, 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.

14. Q. Can the Certificate of Indian Status, commonly referred to as the status card or INAC card, be used as a Native American tribal document for Form I-9 purposes?

- A.** No. This card is not a Native American tribal document. It is issued by Indian and Northern Affairs Canada (INAC), which is a part of the Canadian government.

15. 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 Form 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.

16. 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 (Forms I-766) and Permanent Resident Cards (Forms I-551) that appear to be expired on their face, but have been extended by USCIS.

For example, Temporary Protected Status (TPS) beneficiaries whose Employment Authorization Documents (Forms I-766) appear to be expired may be automatically extended in a Federal Register notice. These individuals may continue to work based on their expired Employment Authorization Documents (Forms I-766) during the automatic extension period specified in the Federal Register notice. When the automatic extension of the Employment Authorization Document (Form I-766) expires, you must reverify the employee’s employment authorization.

Please see Part 2 for more information on TPS.

NOTE: Some documents, such as birth certificates and Social Security cards, do not contain an expiration date and should be treated as unexpired.

17. Q. How can I tell if a DHS-issued document has expired? If it has expired, should I reverify the employee?

- A.** Some INS-issued documents, such as older versions of the Alien Registration Receipt Card (Form I-551), do not have expiration dates, and are still acceptable for Form I-9 purposes. However, all subsequent DHS-issued Permanent Resident Cards (Forms I-551) contain two-year or 10-year expiration dates. You should not reverify an expired Alien Registration Receipt Card/Permanent Resident Card (Form I-551). Other DHS-issued documents, such as the Employment Authorization Document (Form I-766) also have expiration dates. These dates can be found on the face of the document. Generally, Employment Authorization Documents (Forms I-766) must be reverified upon expiration.

18. 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 authorization. May I accept such printouts in place of a Social Security card as evidence of employment authorization?

- A.** No. Only a person’s official Social Security card or a receipt for a replacement card issued by SSA is acceptable.

19. 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 authorization, since such Social Security cards do not establish this and are not acceptable documents for Form I-9. Such an employee should go to the local SSA office with proof of his or her lawful employment status to be issued a Social Security card without employment restrictions.

20. 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.

21. Q. I noticed on Form I-9 that under List A there are three spaces for document numbers and expiration dates. Does this mean I have to see three List A documents.

- A. No. Form I-9 (Rev. 03/08/13N) includes an expanded document entry area in Section 2. The additional spaces are provided in case an employee presents a List A document that is really a combination of more than one document. For example, an F-1 student in curricular practical training may present, under List A, a foreign passport, Form I-94/Form I-94A and Form I-20 that specifies that you are his or her approved employer. Form I-9 provides space for you to enter the document number and expiration date for all three documents. Another instance where an employer may need to enter document information for three documents is for J-1 exchange visitors. If an employee provides you with one document from List A (e.g., U.S. passport), or a combination of 2 documents (e.g., foreign passport and Form I-94/94A), you do not need to fill out any unused space(s) under List A.

22. Q. When I review an employee’s identity and employment authorization documents, should I make copies of them?

- A. If you participate in E-Verify and the employee presents a document used as part of Photo Matching, currently the U.S. passport and

passport card, 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. Other documents may be added to Photo Matching in the future. 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 must do so for all employees. 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.

23. Q. When can employees present receipts for documents in lieu of actual documents from the Lists of Acceptable Documents?

- A. The “receipt rule” is designed to cover situations in which an employee is authorized to work at the time of initial hire or reverification, but he or she is not in possession of a document listed on the Lists of Acceptable Documents accompanying 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 Form I-9 to complete Section 2 or Section 3 of 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 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.

The individual must present Form I-551 by the expiration date of the temporary I-551 stamp or within one year from the date of

issuance of Form I-94/Form I-94A if the I-551 stamp does not contain an expiration date.

3. A Form I-94/Form I-94A containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (Form I-766) or a combination of an unrestricted Social Security card and List B document. The employee must present an Employment Authorization Document (Form I-766) or an unrestricted Social Security card in combination with a List B document to complete 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.

24. Q. My employee has applied for a new Employment Authorization Document (Form I-766). Is the USCIS receipt notice covered by the Form I-9 receipt rule?

- A. In this case, the USCIS receipt notice is not an acceptable receipt for Form I-9 purposes. An employee with temporary employment authorization and holding an Employment Authorization Document (Form I-766) should apply for a new card at least 90 days before the expiration of his or her current document. If your employee applied for a new card at least 90 days before his or her current card expired but is nearing the end of the 90-day processing period without a decision from USCIS, instruct your employee to call the National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD) about the status of his or her application. USCIS strongly encourages that employees first call the National Customer Service Center before visiting a USCIS office to prevent possible delays. If your employee prefers to check on the status of his or her application at a USCIS office, he or she may schedule an InfoPass appointment at www.infopass.uscis.gov. When your employee's current Employment Authorization Document (Form I-766) expires, he or she must be able to present a List A document, a List C document, or an acceptable receipt under the receipt rule to satisfy Form I-9 reverification requirements.

25. Q. My nonimmigrant employee has presented a foreign passport with a Form I-94/Form

I-94A (List A, Item 5). How do I know if this employee is authorized to work?

- A. You, as the employer, likely have submitted a petition to USCIS on the nonimmigrant employee'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 the North American Free Trade Agreement (NAFTA) with an offer letter from your company. This nonimmigrant worker will have a Form I-94/Form I-94A indicating a TN immigration status, and may choose to present it with his or her passport under List A. The employee may also present Form I-94/Form I-94A indicating a TN immigration status as a List C document, in which case your employee will need to present a List B document (e.g., Canadian driver's license) to satisfy Section 2 of Form I-9.
 2. A student working in on-campus employment or participating in curricular practical training. (See Part 2.)
 3. A J-1 exchange visitor. (See Part 2.)

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 only for the employer who petitioned on their behalf. 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. See Part 2 for more information on nonimmigrant employees.

26. Q. My new employee presented two documents to complete Form I-9, each containing a different last name. One document matches the name she entered in Section 1. The employee explained that she had just gotten married and changed her last name, but had not yet changed the name on the other document. Can I accept the document with the different name?

- A. You may accept a document with a different name than the name entered in Section 1 provided that you resolve the question of

whether the document reasonably relates to the employee. You also may wish to attach a brief memo to Form I-9 stating the reason for the name discrepancy, along with any supporting documentation the employee provides. An employee may provide documentation to support his or her name change, but is not required to do so. If, however, you determine that the document with a different name does not reasonably appear to be genuine and to relate to her, you may ask her to provide other documents from the Lists of Acceptable Documents on Form I-9.

27. Q. My employee entered a compound last name in Section 1 of Form I-9. The documents she presented contain only one of these names. Can I accept this document?

- A. DHS does not require employees to use any specific naming standard for Form I-9. If a new employee enters more than one last name in Section 1, but presents a document that contains only one of those last names, the document he or she presents for Section 2 is acceptable as long as you are satisfied that the document reasonably appears to be genuine and to relate to him or her. It is helpful for individuals attesting to lawful permanent resident status who have more than one name to enter their name on Form I-9 as it appears on their Permanent Resident Card (Form I-551).

28. Q. The name on the document my employee presented to me is spelled slightly differently than the name she entered in Section 1 of Form I-9. Can I accept this document?

- A. If the document contains a slight spelling variation, and the employee has a reasonable explanation for the variation, the document is acceptable as long as you are satisfied that the document otherwise reasonably appears to be genuine and to relate to him or her.

29. 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 reverification, an employee must be allowed to choose what documentation to present from either List A or List C. 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.

30. Q. Can DHS double-check the status of an individual I hired, or "run" his or her number (typically an Alien Number or Social Security number) and tell me if it is valid?

- 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 reason to believe documentation may not be valid, in which case ICE may investigate the possible violation of law.

31. Q. My employee presented me with a document issued by INS rather than DHS. Can I accept it?

- A. Yes, you can accept a document issued by INS if the document is unexpired and reasonably appears to be genuine and to relate to the individual presenting it. 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 or Forms I-94 noting asylee status, 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.

Questions about Completing and Retaining Form I-9

32. Q. Can an employee leave any part of Section 1 on Form I-9 blank?

- A. Employees must complete every applicable field in Section 1 of Form I-9 with the exception of the fields requesting the employee's e-mail address, telephone number and Social Security number. However, employees must enter their Social Security number in this field if you participate in E-Verify.

NOTE: Not all employees who attest to being an Alien Authorized to Work will have an expiration date for their employment authorization. However, refugees and asylees who present an Employment Authorization Document (Form I-766) have employment authorization that does not expire. These individuals should put "N/A" where Section 1 asks for an expiration date.

33. Q. How do I correct a mistake on an employee's Form I-9?

- A. The best way to correct Form I-9 is to line through the portions of the form that contain incorrect information, then enter the correct information. Initial and date your correction. If you have previously made changes on Forms I-9 in White-Out instead, USCIS recommends that you attach a note to the corrected Forms I-9 explaining what happened. Be sure to sign and date the note.

34. Q. What should I do if I need to reverify an employee who filled out an earlier version of Form I-9?

- A. If you used a version of Form I-9 when you originally verified the employee that is no longer valid, and you are now reverifying the employment authorization of that employee, the employee must provide any document(s) he or she chooses from the current Lists of Acceptable Documents. Enter this new document(s) in Section 3 of the current version of Form I-9 and retain it with the previously completed Form I-9. To see if your form is an acceptable version of Form I-9, go to www.uscis.gov/I-9.

For more information on reverification, please see Part 2.

35. 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.

36. Q. What do I do when an employee's employment authorization expires?

- A. To continue to employ an individual whose employment authorization has expired, you will need to reverify him or her in Section 3 of Form I-9. Reverification must occur no later than the date that employment 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 employment 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, enter 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 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 and provide the employee with at least 90 days notice prior to the expiration date of the employment authorization.

You may not reverify an expired U.S. passport or passport card, 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 Form I-9 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.

37. Q. Can I avoid reverifying an employee on Form I-9 by not hiring persons whose employment authorization has an expiration date?

- A. No. 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 individual is qualified for a particular job may be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.

38. 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-9 for you, such as a personnel officer, foreman, agent, or anyone else acting on your behalf, such as a notary public. Please note that if someone else fills out Form I-9 on your behalf, he or she must carry out full Form I-9 responsibilities. However, you are still liable for any violations in connection with the form or the verification process.

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 employment authorization documents should also complete and sign Section 2 on your behalf.

39. 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 employment authorization 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.

40. 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 with 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:

- The PEO may rely upon the previously completed Form I-9 at the time of initial hire for each employee continuing employment as a co-employee of you and the PEO, or
- 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 the 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 authorized to work,
6. The history of the party's previous violations and
7. Other relevant factors.

41. Q. Our company acquired another company, along with its employees. Are we required to complete Forms I-9 for these employees?

- A. Employers who have acquired another company or have merged with another company have two options:

- **Option A:** Treat all acquired employees as new hires and complete a new Form I-9 for each and every individual irrespective of when that employee was originally hired. Enter the effective date of acquisition or merger as the date the employee began employment in Section 2 of the new Form I-9.
- **Option B:** Treat acquired individuals as employees who are continuing in their uninterrupted employment status and retain the previous owner's Forms I-9 for each acquired employee. Note that you are liable for any errors or omissions on the previously completed Forms I-9.

NOTE: Employees hired on or before November 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times, are exempt from completing Form I-9 and cannot be verified in E-Verify. For making this determination, see 8 CFR 274a.2(b)(1)(B)(viii) and 8 CFR 274a.7. If you determine that an employee hired on or before November 6, 1986 is not continuing in his or her employment or does not have a reasonable expectation of employment at all times, the employee may be required to complete a Form I-9.

If you choose to complete new Forms I-9 (Option A), in order to ensure that you do not engage in discrimination, you must do so for all of your acquired employees, without regard to actual or perceived citizenship status or national origin.

Federal contractors with the FAR E-Verify clause have special rules relating to the verification of existing employees. For more information, see the E-Verify Supplemental Guide for Federal Contractors at www.uscis.gov/E-Verify.

Mergers and acquisitions can be a very complicated area of the law and determining whether or not employees are continuing in their employment with the new entity for Form I-9 purposes is often not clear. For that reason USCIS strongly recommends that any business con-

fronted with this issue should consider retaining private legal counsel.

42. Q. How does OSC obtain the necessary information 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 to initiate an investigation, request information and documents, and interview your employees. If you refuse to cooperate, OSC can obtain a subpoena to compel you to produce the information requested or to appear for an investigative interview.

43. 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 authorization documents just like all other employees.

44. Q. If I am a recruiter or referrer for a fee, do I have to fill out Forms I-9 on individuals that I recruit or refer?

- A. No, with three exceptions: Agricultural associations, agricultural employers, and farm labor contractors must complete Forms I-9 on all individuals who are recruited or referred for a fee. However, all recruiters and referrers for a fee must complete Forms I-9 for their own employees hired after November 6, 1986. Also, all recruiters and referrers for a fee are liable for knowingly recruiting or referring for a fee individuals not authorized to work in the United States and must comply with federal anti-discrimination laws.

45. Q. Can I complete Section 1 of Form I-9 for an employee?

- A. You may help an employee who needs assistance in completing Section 1 of Form I-9. However, you must also complete the Preparer and/or Translator Certification block. The employee must still sign the certification block in Section 1.

46. 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 a Form I-9 on his or her own behalf unless the person is an employee of a separate business entity, such as a corporation or partnership. If the person is an employee of a separate business entity, he or she, and any other employees, will have to complete Form I-9.

47. Q. I have heard that some state employment agencies, commonly known as state workforce agencies, can certify that people they refer are authorized to work. Is that true?

- A. Yes. A state employment agency may choose to verify the employment authorization and identity of an individual it refers for employment on Form I-9. In such a case, the agency must issue a certification to you so that you receive it within 21 business days from the date the referred individual is hired. If an agency refers a potential employee to you with a job order, other appropriate referral form, or telephonically authorized referral, 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. Before receiving the certification, you must retain the job order, referral form, or annotation reflecting the telephonically authorized referral as you would Forms I-9. When you receive the certification, 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.

48. Q. How can I protect private information on Forms I-9?

- A. Since Form I-9 contains an employee's private information, and you are required to retain forms for specific periods of time, you should ensure that you protect that private information, and that it is used only for Form I-9 purposes. To protect employees' private information, ensure that completed Forms I-9 and all supporting documents, including photocopies of

documents, as well as information regarding employment authorization if you participate in E-Verify, are stored in a safe, secure location that only authorized individuals can access. For more information on protecting electronically stored Forms I-9, see Part 3.

Questions about Avoiding Discrimination

49. 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 to relate to the person presenting it?

- A. No. If you are presented with documentation that does not reasonably appear to be genuine or to relate to the employee, you 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 other than through its E-Verify program. If you treat all employees equally and do not single out employees based on their national origin or citizenship status for closer scrutiny, you are unlikely to be found to have engaged in unlawful discrimination.

50. 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, his Form I-94 does not contain an 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 nonimmigrants such as certain citizens of the Federated States of Micronesia and the Republic of the Marshall Islands, are authorized to work because of their status. These nonimmigrants may present a Form I-94/Form I-94A that does not have an expiration date or any combination of documents from the List of Acceptable Documents. Such individuals should check "An alien authorized to work," enter the Alien Number or Admission Number in the first space, and "N/A" in the second space, because their employment authorization does not expire. Refusing to hire employment-authorized individuals because they are unable to provide an

expiration date on Form I-9 is a violation of the anti-discrimination provision in the INA.

NOTE: Some foreign students who are authorized to work also may not have a specific expiration date for their employment authorization. See Part 2 for more information.

Questions about Employees Hired On or Before November 6, 1986

51. Q. Will I be subject to employer sanctions penalties if an employee I hired on or before November 6, 1986 is in the United States illegally?

- A. No. You will not be subject to employer sanctions penalties for retaining an employee who is not authorized to work in the United States if the employee was hired on or before November 6, 1986. However, the fact that the employee was on your payroll on or before November 6, 1986, does not give him or her the right to remain in the United States. Unless the employee obtains permission from DHS to remain in the United States, he or she is subject to apprehension and removal from the United States.

Questions about Different Versions of Form I-9

52. 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 United States and other U.S. territories 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 preparer and/or translator to assist them in completing the form.

53. Q. Are employers in Puerto Rico required to use the Spanish version of Form I-9?

- A. No. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9 to verify new employees.

54. Q. May I continue to use earlier versions of Form I-9?

- A. No, employers must use the current version of Form I-9. A revision date with an "N" next to it indicates that all previous versions with earlier revision dates, in English or Spanish, are no longer valid. You may also use subsequent versions that have a "Y" next to the revision date. If in doubt, go to www.uscis.gov/i-9 to view or download the most current form.

55. Q. Where do I get the Spanish version of Form I-9?

- A. You may download the Spanish version of this form from the USCIS website at www.uscis.gov/i-9. For employers without internet access, you may call the USCIS Forms Request Line toll-free at 1-800-870-3676.

Questions about Military IDs

56. Q. I know that a valid unexpired military ID card is a valid List B identification document. Is a military ID card ever acceptable as List A evidence of both identity and employment authorization?

- A. Yes, but only if the employer is the U.S. military and the Form I-9 is completed in the context of military enlistment. In the case of an individual lawfully enlisted in the U.S. Armed Forces, a valid, unexpired military ID card may be accepted as a List A document by the Armed Forces only. No other employer may accept a military ID card as a List A document.

For more questions and answers on Form I-9 topics, go to www.uscis.gov/i-9 Central and select I-9 Central Questions & Answers.
