

## Immigration Related Responsibilities When Hiring an Employee and Completing Form I-9

### OVERVIEW

All U.S. employers are required to examine and verify the eligibility of each employee to be lawfully employed in the United States, regardless of the immigration status of the employee. This includes U.S. citizens, permanent residents of the United States, and temporary foreign workers as well as anyone to whom a job is offered. To verify an employee's status and to show that an employer has complied with the law Form I-9, Employment Eligibility Verification must be completed for every employee.

### WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)

[Information about Form I-9](#)

[Information about E-Verify – to help you verify that a newly hired employee is eligible to work in the United States](#)

[Information about other responsibilities you may have, as an employer, under U.S. immigration law](#)

## Information about Form I-9

### OVERVIEW

All employers must verify that each individual who is hired is eligible for employment in the United States, even if the individual is a United States citizen. Failure to do so can result in severe penalties against the employer. To verify that an individual is eligible for employment, the employer must complete a copy of Form I-9, "Employment Eligibility Verification," for each employee.

### WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)

[Information about Form I-9 \(Frequently Asked Questions\)](#)

[Information about documents that are acceptable to establish both identity and employment eligibility](#)

[Information about documents that are acceptable to establish identity only](#)

[Information about documents that are acceptable to establish employment eligibility only](#)

[Information about how to properly retain completed copies of Form I-9](#)

**Please Note:** USCIS has launched "I-9 Central", a new online resource. I-9 Central can be viewed at [www.uscis.gov/I-9central](http://www.uscis.gov/I-9central)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## General FAQs about Form I-9

- [What is Form I-9?](#)
- [How do I obtain Form I-9?](#)
- [Can I reproduce Form I-9?](#)
- [Who needs to complete a Form I-9?](#)
- [Who is responsible for completing the different sections of Form I-9?](#)
- [Can Form I-9 be filled out before the job is offered?](#)
- [When should Section 1 be completed?](#)
- [When should Section 2 be completed?](#)
- [When should Section 3 be completed?](#)
- [Can I tell a potential employee which document\(s\) he or she must bring for verification?](#)
- [How do I know if a document is genuine or false?](#)
- [Can I confirm an employee's work authorization by contacting the government?](#)
- [Can photocopies be accepted?](#)
- [What if the person we hire only has temporary work authorization?](#)
- [What if my employee was granted work authorization through TPS?](#)
- [Who is required to do the re-verification of an employee's work authorization?](#)
- [What is the portability provision for an H-1B visa holder?](#)
- [Does this new portability provision affect the way the company completes Form I-9?](#)
- [If I have filed a petition for an extension of status for my employee, can I continue employing him or her?](#)
- [How does an employer fulfill the Form I-9 verification requirement under the 240-day rule?](#)
- [Are there any exceptions to completing Form I-9?](#)
- [What is remuneration?](#)
- [How can I obtain the Form I-9 Handbook?](#)
- [Can I do something to help my employee get a Social Security Card?](#)
- [What is an EAD?](#)
- [How long is the validity period of an EAD?](#)

### What is Form I-9?

Form I-9 is the Employment Eligibility Verification Form issued by USCIS. By law all U.S. employers are responsible for completion and retention of Forms I-9 for all U.S. citizen as well as non-U.S. citizen employees hired for employment in the U.S. after November 6, 1986. This process includes an employee's attestation of work authorization and an employer's review of the documents presented by that employee to demonstrate identity and work authorization. The employee and employer both must provide information and signatures as indicated on the form.

### How do I obtain Form I-9?

Form I-9 may be downloaded from the USCIS website at [www.uscis.gov](http://www.uscis.gov).

### Can I reproduce Form I-9?

Employers are permitted to reproduce Form I-9, provided that the resulting copy, facsimile, or scanned form is legible, the content and sequence of the information and instructions match those on the official USCIS document and the paper is of retention quality. Copies of the Form I-9 may be reproduced in either double-sided or single-sided format.

### Who needs to complete a Form I-9?

Every newly hired employee must complete Form I-9, including citizens and nationals of the United States. Both the employer and the employee are responsible for completing Form I-9.

**Note:** All employers are required to examine all of their employees' work authorization statuses regardless of whether the employee is a U.S. citizen, permanent resident, or temporary foreign worker.

### Who is responsible for completing the different sections of Form I-9?

The employee is obligated to complete [Section 1](#), Employee Information and Verification, of Form I-9 at the time of hire.

The employer is obligated, after physically examining the documents presented by the employee, to complete [Section 2](#), Employer Review and Verification, and [Section 3](#), Updating and Re-verification (if applicable), of Form I-9.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### Can Form I-9 be filled out before the job is offered?

An individual should not complete a Form I-9 for an employer until after he or she has accepted the position.

**Note:** If a company has an individual complete Form I-9 but no job offer is extended, then the company could be faced with a claim of discrimination since Form I-9 asks about citizenship and alienage, and requires the production of documents that might indicate national origin.

### When should Section 1 be completed?

Section one of Form I-9 must be completed and signed by every newly hired employee on or before the date of hire, regardless of his or her immigration status. The employee must attest that he or she is a U.S. citizen, lawful permanent resident, or is otherwise authorized to work for the employer in the United States. The employee must present the employer with documentation establishing identity and employment eligibility in accordance with the List of Acceptable Documents on Form I-9.

### When should Section 3 be completed?

Employers should complete Section 3 of Form I-9 when updating and re-verifying the employment authorization of an employee whose previous valid authorization has expired. Section 3 does not apply to employees who are U.S. citizens or permanent residents. Section 3 should only be completed when the employee indicates in Section 1 of Form I-9 that he or she is an alien authorized to work until a certain date. For example, when a USCIS-issued employment authorization document is scheduled to expire, the employer must re-verify that the employee has renewed his/her authorization to work and has a valid document from either List A or one from both List B and List C in his/her possession. The employee can choose which documents to provide.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date. Employers **CANNOT** specify which document(s) they will accept from an employee. Only the employee can choose the acceptable document(s) to provide.

**Note:** Section three of Form I-9 should only be completed when choice three in Section one is selected. It should not be used if the person is a permanent resident or a U.S. citizen.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### When should Section 2 be completed?

Section two of Form I-9 must be completed and signed by every employer within three business days of the hire. If the employment relationship will last less than three days, then section two must be completed at the time of hire. Section two must be completed and signed by every employer whether he or she employs thousands of employees or only one. The employer must ask each employee to provide documents that prove both his/her identity and his/her authorization to work. There are three lists on the back of the Form I-9 that sets forth acceptable documentation:

- List A (documentation establishing both identity and authorization to work)
- List B (documentation establishing only identity)
- List C (documentation establishing only authorization to work)

The employee may elect to provide one document from List A, or two documents, one from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

**Note:** Certain documents have been created and placed in the regulations as acceptable even though not indicated as such on Form I-9. Those Forms are:

- Form I-94 issued to Refugees – for the purpose of establishing initial employment eligibility; and
- Form I-94 issued to Asylees with “employment authorized” indicated on the reverse side - for the purpose of establishing employment eligibility only.

### Can I tell a potential employee which document(s) he or she must bring for verification?

No, an employer cannot tell an employee which documents to present for I-9 purposes. Employers may, however, direct the employee to the list of acceptable documents shown on the back of Form I-9 as well as the special instructions regarding the most current list of acceptable documents contained on the USCIS website at [www.USCIS.gov](http://www.USCIS.gov). If an employee presents documents not appearing on the list, an employer should ask for additional proof of identity and/or employment authorization.

An employer who requests specific documents, such as a driver’s license and a Social Security card, may be charged with document abuse and fined accordingly.

**Note:** Citizens and non-citizens must be treated identically in completing Form I-9.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### How do I know if a document is genuine or false?

An employer is not required to know with absolute certainty whether a document is genuine or false. The law merely requires that an employer examine the original of the document (not a photocopy) and make a good faith determination that the document:

- Appears to relate to the employee;
- Appears to be genuine; and
- Is an acceptable document for Form I-9.

An employer must refrain from overzealous scrutiny of documents. The rejection of a questionable document that later proves to be genuine may result in a violation of the anti-discrimination provisions of the Immigration laws of the U.S. Also, an employer who singles out a particular nationality or ethnic group for a higher level of scrutiny may face sanctions under the law.

### Can I confirm an employee's work authorization by contacting the government?

ONLY officially registered participants in the Department of Homeland Security's automated verification system can receive confirmation of work authorization of a newly hired employee by contacting the government. This program is called E-Verify. E-Verify is an online application to verify the employment eligibility of newly hired employees, regardless of citizenship.

**Note:** [More information about E-Verify](#)

### Can photocopies be accepted?

No, photocopies of documents cannot be accepted for Form I-9 purposes. Employees must present original documents.

The only exception is that a newly hired employee may present a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal. Beginning October 31, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.

**What if the person we hire only has temporary work authorization?**

An employee that has been issued temporary work authorization must produce proof of continued work authorization before the date of expiration. Employers should try to remind the employee 90 days prior to the expiration of his or her current work authorization.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date.

**What if my employee was granted work authorization through TPS?**

Unfortunately, applications for an employment authorization document may not be processed in time. Therefore, employers with employees who have been granted work authorization via TPS must be careful to monitor expiration dates and stay up-to-date with employees' work authorization status as well as notices published by USCIS in the Federal Register or on the [uscis.gov](http://uscis.gov) website. Failure to do so could result in sanctions from continued hiring of an employee who has lost work authorization or the inappropriate firing of an employee who continues to have work authorization.

**Who is required to do the re-verification of an employee's work authorization?**

All employers are responsible for re-verifying the employee's work authorization.

**What is the portability provision for an H-1B visa holder?**

The portability provisions allow a nonimmigrant alien, who was previously issued an H-1B visa or who was otherwise accorded H-1B status, to begin working for a new H-1B employer as soon as the new employer files an H-1B petition for the alien, rather than having to wait for USCIS approval.

**If I have filed a petition for an extension of status for my employee, can I continue employing him or her?**

Yes, after filing a non-frivolous petition for extension of status for your employee, you may continue to employ him or her for up to 240 days. This 240-day rule is limited to the following non-immigrant visa classifications: A-3, E, G-5, H, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.

**How would an employer fulfill the Form I-9 verification requirement under the 240-day rule?**

Regulations authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. While the employment is authorized, there is no provision on the Form I-9 for the documentation of this fact. Therefore, employers may want to follow whatever documentation procedures they use for the 240-day grace period.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**Does this new portability provision affect the way the company completes Form I-9?**

Form I-9 contains no provision for this authorization. Therefore, employers should follow the documentation procedures they currently use for an extension of this type. As an example, the employer could attach a copy of the receipt notice for the filed H-1B petition along with a copy of the alien's I-94 to the Form I-9 kept on file or the employer could write "covered by the H-1B portability provision" on the Form I-9.

**Are there any exceptions to completing Form I-9?**

Yes. Independent contractors or those persons who were hired prior to November 6, 1986 are exempted from completing Form I-9.

**What is remuneration?**

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

**How can I obtain the Form I-9 handbook?**

Copies of the Form I-9 Handbook can be ordered by calling (800) 870-3676. The Form I-9 Handbook may be downloaded from the USCIS website at [www.uscis.gov/files/form/m-274.pdf](http://www.uscis.gov/files/form/m-274.pdf)

The Form M-274, Employer Handbook, contains instructions for completing Form I-9, Employment Eligibility Verification.

- Please read the instructions carefully and note that many changes have occurred in the regulations since the publication of the handbook. Therefore, the handbook may not be all-inclusive or up-to-date. The handbook was last updated on January 5, 2011.

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### Can I do something to help my employee get a Social Security card?

An employer who wishes to assist an employee in getting a Social Security card may do so by obtaining the **Form SS-5, “Application for a Social Security Card.”** The Form SS-5 includes the instructions for completing the application and documents needed.

The Form SS-5 can be obtained by:

- Downloading via the Internet at <http://www.ssa.gov/>; or
- Calling the Social Security Administration at 1-800-772-1213.

**Note:** The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

### What is an EAD?

Certain foreign nationals who are temporarily in the U.S. may file a Form I-765, *Application for Employment Authorization*, to request an Employment Authorization Document (EAD), which authorizes them to work legally in the U.S. during the time the EAD is valid.

### How long is the validity period of an EAD?

Foreign nationals usually apply for an EAD when they apply for adjustment of status to that of permanent resident. Therefore, they usually file Form I-765, *Application for Employment Authorization*, together with Form I-485, *Application to Register Permanent Residence or Adjust Status*, with USCIS.

Initial EAD filings will generally receive an EAD that is valid for one year because they are usually submitted with Form I-485 that can only be filed when there is an immigrant visa number available to the foreign national. However, when their visa availability date retrogresses (i.e., when demand for visa numbers exceeds forecasted supply), and a visa number is no longer available, then the foreign national may receive an EAD that is valid for two years.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about documents that are acceptable to establish both identity and employment eligibility

### OVERVIEW

The following documents are acceptable evidence to establish both identity and employment eligibility as long as they relate to the individual who is presenting the document:

- A U.S. passport or U.S. Passport Card;
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa; or
- Employment Authorization Document that contains a photograph (Form I-766);

In certain cases, USCIS may grant the individual an immigration status of E, H, L, O, P, or Q. For such an individual, an unexpired foreign passport is acceptable proof of identity and employment eligibility if the individual also has 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 indicated on the form.

Passports 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 U.S. and the FMI or RMI are also acceptable proof of identity and employment eligibility.

### General FAQs

- [Which List A documents are acceptable?](#)
- [What documents can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?](#)
- [What if an employee does not have a document from List A?](#)
- [When should Section 1 be completed?](#)
- [When should Section 2 be completed?](#)
- [When should Section 3 be completed?](#)

**Which List A documents are acceptable?**

The following documents are acceptable evidence for both identity and employment eligibility so long as they relate to the individual who is presenting the document:

- A U.S. passport or U.S. Passport Card;
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa;
- Employment Authorization Document that contains a photograph (Form I-766);
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with 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.
- 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 U.S. and the FMI or RMI.

**Note:** Citizens of the Republic of Palau must possess a valid Employment Authorization Document (EAD) before working in the United States. (Although citizens of the FSM and RMI no longer need an Employment Authorization Document (EAD) to work in the United States, the Compact did not include Palau. Citizens of Palau are still required to obtain an EAD as evidence of their eligibility to work in the United States).

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

**What documentation can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?****F-1 students who have filed a STEM OPT extension:**

An F-1 student who has timely filed Form I-765 for a 17-month STEM extension of his/her post-completion OPT, and whose EAD (Form I-766) has expired, is authorized to continue working while the Form I-765 application is pending for a period not to exceed 180 days.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD; and
- The USCIS receipt notice (Form I-797, Notice of Action) showing a timely filing of the Form I-765 extension application; and
- Form I-20 updated to show that the DSO recommended the STEM extension for a work authorization period beginning on the date after the expiration of the EAD.

This combination of documents satisfies the Form I-9 document presentation requirements for 180 days (or less if the application is denied beforehand). If the 17-month STEM extension is approved, the student should receive a new Form I-766 EAD within the 180-day period.

**F-1 OPT students who have filed an H-1B petition:**

The Designated School Official (DSO) will issue a “cap-gap” Form I-20 which will show on page 3 that the student’s employment authorization has been extended and the effective dates.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD; and
- A “cap-gap” 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 the Form I-9 document presentation requirements until September 30<sup>th</sup>, or until the date of the denial of the H-1B petition. If the receipt notice has not yet been issued, the expired EAD and the “cap-gap” Form I-20 are sufficient. This combination of documents satisfies the Form I-9 until the expiration date noted on the “cap-gap” Form I-20, but not later than September 30<sup>th</sup>. If the student presents a “cap-gap” Form I-20 without a receipt notice, the employer must re-verify upon the expiration date noted on the Form I-20. The student may present another “cap-gap” Form I-20 indicating continued employment authorization to satisfy the re-verification requirement.

**What if an employee does not have a document from List A?**

Employers **CANNOT** specify which document(s) they will accept from an employee. If an employee does not present a document from List A, he or she must provide the employer with one document from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about documents that are acceptable to establish identity only

### OVERVIEW

The Form I-9 lists the documents that are acceptable evidence to establish identity for individuals 18 years of age or older. If a prospective employee shows an employer a document indicated in List B on the Form I-9 instructions, then the individual must also show the employer a separate document from List C that establishes employment eligibility.

### General FAQs

- [Which List B documents are acceptable?](#)
- [When should Section 1 be completed?](#)
- [When should Section 2 be completed?](#)
- [When should Section 3 be completed?](#)

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

**Which List B documents are acceptable?**

Certain documents are only acceptable as evidence to establish identity for individuals 18 years of age or older. If a prospective employee shows an employer one of the following documents, the individual must also show the employer a separate document that establishes employment eligibility. Documents that are acceptable for establishing identity include:

- Driver's license or ID card issued by a State or outlying possession of the U.S. provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;
- 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;
- School ID card with a photograph;
- Voter's registration card;
- U.S. military card or draft record;
- Military dependent's ID card;
- U.S. Coast Guard Merchant Mariner Card;
- Native American tribal document; or
- Driver's license issued by a Canadian government authority.

**For individuals under the age of 18 who are unable to present a document listed above:**

- A school record or report card;
- A clinic, doctor, or hospital record; or
- A day-care or nursery school record.

## Information about documents that are acceptable to establish employment eligibility only

### OVERVIEW

The Form I-9 lists the documents that are acceptable evidence to establish employment eligibility. If a prospective employee shows an employer a document indicated in List C on the Form I-9 instructions, then the individual must also show a separate document from List B that establishes identity.

### General FAQs

- [Which List C documents are acceptable?](#)
- [Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?](#)
- [When should Section 1 be completed?](#)
- [When should Section 2 be completed?](#)
- [When should Section 3 be completed?](#)

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### Which List C documents are acceptable?

Certain documents are only acceptable as evidence to establish employment eligibility. If a prospective employee shows an employer one of the following documents, the individual must also show a separate document that establishes identity. Documents that are acceptable for establishing employment eligibility are:

- 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 U.S.;
- Certification of Birth Abroad issued by the Department of State (Form FS-545);
- Certification of Report of Birth issued by the Department of State (Form DS-1350);
- Original or certified copy of a birth certificate issued by a State, county, municipal authority, or territory of the U.S. bearing an official seal;
  - **Beginning October 31, 2010, if an employee presents a Puerto Rico birth certificate for List C, the employer must look at the date the certified copy of the birth certificate was issued to ensure that it is still valid. As of October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010 are acceptable for Form I-9 purposes.**
- Native American tribal document;
- U.S. Citizen ID Card (Form I-197);
- Identification Card for Use of Resident Citizen in the U.S. (Form I-179); or
- Employment authorization document issued by the Department of Homeland Security.

To establish initial employment eligibility, a refugee may use Form I-94. Then, within 90 days of being hired, the refugee must present either: an unexpired Form I-766 or a Social Security card that does not display any employment restrictions. The refugee must also present a document which establishes the individual's identity. If an individual has been granted asylum, the individual must present a Form I-94 which indicates that the bearer has been granted asylum or "asylee" status. Even though it is not required by immigration law, an asylee should also present a Social Security card, which does not display any employment restrictions, within 90 days of being hired.

The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?**

The employee may in certain instances use receipts instead of original documents during the Form I-9 process. If an employee's document has been lost, stolen, or damaged, then the employee can present a receipt for the application for a replacement document. The replacement document needs to be presented to the employer within 90 days of hire, or, in the case of re-verification, the date the employment authorization expires. In these cases, the previous document must still have been otherwise valid (i.e., the employee would still have been within the validity period previously granted if not lost, stolen, etc.).

It is important to note that a receipt for an application for an initial or renewal (as opposed to a replacement) USCIS Employment Authorization Document (EAD) filed on a Form I-765, Application for Employment Authorization, is NOT an acceptable document for I-9 verification purposes.

**Note:** There are exceptions to this receipt rule.

- Under the H-1B portability provision, H-1B employees may begin working for the new employer once that employer has filed a new petition for the employee.
- Employees in the following nonimmigrant visa categories may continue to work for 240 days after the expiration of their current period of stay, as long as an extension of stay has been filed with USCIS: A-3, E-1, E-2, G-5, H-1, H-2A, H-2B, H-3, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about how to properly retain completed copies of the Form I-9

### OVERVIEW

After Form I-9 has been completed by the employer and the employee, USCIS suggests that the employer and the employee review it for completeness. The employer should store all I-9 Forms separately from other employee personnel records.

If the employee has a temporary work authorization, the employer should track its expiration date. The employer should periodically review all I-9 Forms to ensure that they comply with their expiration dates. Employers should store the I-9 Forms for terminated employees in a separate file.

An employer must retain Form I-9 for three years after the hire date or one year after the date of the employee's termination, whichever is later. A recruiter or a "referrer for a fee" must retain Form I-9 for three years after the date of hire.

### General FAQs

- [What do I do with Form I-9 after it is completed?](#)
- [How should Form I-9 be stored?](#)
- [Can I store Form I-9 electronically?](#)
- [How long should Form I-9 be retained?](#)
- [If an employee is fired or employment is terminated, am I still required to keep Form I-9?](#)
- [Can I make and keep copies of the documents used in Section 2 of Form I-9?](#)
- [As an employer, do I need to re-verify a birth certificate presented by an existing employee born in Puerto Rico?](#)
- [Would DHS ever audit employers for the completion and retention of Forms I-9?](#)
- [What happens if Form I-9 is not completed when filed or if it is not retained?](#)
- [What if I request additional documents to establish work authorization?](#)
- [What do I need to do if I notice an error on a Form I-9 and I need to revise it?](#)
- [What are the penalties for knowingly hiring aliens without proper work authorization or unauthorized aliens?](#)
- [Are there any penalties for unlawful discrimination?](#)

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

**What do I do with Form I-9 after it is completed?**

The employer must retain Form I-9 for each employee either for three years after the date of hire or for one year after employment is terminated, whichever is later.

**How should Form I-9 be stored?**

While not required by law or regulation, it is suggested that the original Form I-9 should be filed in a separate file away from the employee's personnel file.

**Can I store Form I-9 electronically?**

Yes, you may sign and store Form I-9 electronically in addition to storing the form on paper, microfilm or microfiche. Guidelines for the electronic signature and storage of Form I-9 can be found on the U.S. Immigration and Customs Enforcement (ICE) website: [Electronic Signature and Storage of the I-9 Employment Eligibility Verification Form](#)

**How long should Form I-9 be retained?**

Form I-9 must be retained for a period of three years after the date of hire or one year after the date employment ends, whichever is later.

**If an employee is fired or employment is terminated, am I still required to keep Form I-9?**

Yes, you must retain Form I-9 for fired employees or for employees who terminate employment. These records must be kept for a period of three years after the date of hire or one year after the date employment ends, whichever is later. While not required by law or regulation, Form I-9 may be pulled out and placed in a separate file for fired employees as well as for those employees who have terminated employment.

**Can I make and keep copies of the documents used in Section 2 of Form I-9?**

Yes, you may keep copies of the Section 2 documents along with the Form I-9. However, if this is done, the policy should be applied to all employees. It is important that you be consistent in making photocopies for **all** employees, regardless of citizenship or nationality.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**As an employer, do I need to re-verify a birth certificate presented by an existing employee born in Puerto Rico?**

No. Employers must not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for Form I-9 purposes and whose employment eligibility was verified on Form I-9 **prior to October 31, 2010**.

**Would DHS ever audit employers for the completion and retention of Forms I-9?**

Yes, DHS may randomly conduct an audit of an employer's Forms I-9. Please bear in mind that failure to comply with a DHS audit is a violation of federal law and can result in significant and costly fines or even an imposition of criminal penalties.

Completed Forms I-9 are not filed with the federal government. Instead, they must be retained by the employer in its own files and made available for inspection by DHS, the Special Counsel for Immigration-Related Unfair Employment Practices (OSC), or the Department of Labor (DOL) for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later.

**What happens if Form I-9 is not completed when filed or if it is not retained?**

An employer faces penalties of not less than \$110 and not more than \$1,100 for each employee for whom a Form I-9 was not properly completed or retained.

**What if I request additional documents to establish work authorization?**

For requesting more or different documents, a fine of not less than \$110 and not more than \$1,100 will be imposed for each individual discriminated against.

**What do I need to do if I notice an error on a Form I-9 and I need to revise it?**

If you notice an error on a Form I-9 after it is completed, simply make the appropriate change to the error, and initial and date the change. If the employee made the error, request that the employee make the change needed. Whoever makes such a change or correction to a Form I-9 must initial and date the correction.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**What are the penalties for knowingly hiring aliens without proper work authorization or unauthorized aliens?**

The following are the penalties or fines, *per* unauthorized employee, that an employer who hires or continues to employ aliens who do not have proper work authorization may face:

- First offense: not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than \$375 and not exceeding \$3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008;
- Second offense: not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008, and not less than \$3,200 and not more than \$6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008; or
- Subsequent offenses--not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008 and not less than \$4,300 and not exceeding \$16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008.

Employers who fail to comply with the employment verification requirements 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.

Any person or entity that knowingly engages in a pattern or practice of hiring, or recruiting or referring for a fee for the employment of an unauthorized alien in the United States 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.

As the Attorney General deems necessary, civil action may be brought in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against an employer who the Service has reasonable cause to believe is engaged in a pattern or practice of employment, recruitment, or referral in violation of law.

### Are there any penalties for unlawful discrimination?

Yes, there are penalties for unlawful discrimination by an employer against individuals who have work authorization.

The fines would be:

- First offense: Not less than \$250 and not more than \$2,000 for each individual discriminated against;
- Second offense: Not less than \$2,000 and not more than \$5,000 for each individual discriminated against; and
- Subsequent offenses: Not less than \$3,000 and not more than \$10,000 for each individual discriminated against.

Fines for document abuse range from \$100 to \$1,000 for each victim.

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about E-Verify

### OVERVIEW

Conducted jointly by the Department of Homeland Security (DHS) and the Social Security Administration (SSA), E-Verify allows employers to use an automated Internet-based system to run employment authorization checks against DHS and SSA databases during the hiring process. E-Verify assists employers in maintaining a legal workforce and protects jobs for authorized U.S. workers. The program is administered by USCIS and is available to employers in all 50 states and the District of Columbia.

To participate in E-Verify, employers can register online at <https://www.vis-dhs.com/EmployerRegistration>. E-Verify is free to all employers who volunteer to participate.

[Information about E-Verify \(Frequently Asked Questions\)](#)

[Information about E-Verify as it applies to Federal Contractors \(Frequently Asked Questions\)](#)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about E-Verify

### General FAQs

- [Am I required to participate?](#)
- [As a federal contractor, am I required to participate in E-Verify?](#)
- [Why should I consider participating in E-Verify?](#)
- [How do I register for participation in E-Verify?](#)
- [Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?](#)
- [If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?](#)
- [I am an employer with multiple hiring sites. Can one site verify everyone? How?](#)
- [What is an E-Verify Designated Agent?](#)
- [What is an E-Verify Corporate Administrator?](#)
- [After an employer registers, how does E-Verify work?](#)
- [Can I verify the immigration status of a new hire that is not a U.S. citizen?](#)
- [What information is required to conduct an E-Verify initial verification?](#)
- [When may an employer initiate a query under E-Verify?](#)
- [What is the required timeframe for conducting an employment eligibility check on a newly hired employee?](#)
- [Which employees should be verified through the system?](#)
- [I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?](#)
- [Is there a "batch access" method in the system?](#)
- [Can I terminate my participation in E-Verify at any time?](#)
- [Does participation in E-Verify provide safe harbor from worksite enforcement?](#)
- [What is U.S. Passport Photo Check?](#)
- [How can I find out more about E-Verify?](#)

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**Am I required to participate?**

No. E-Verify is voluntary for all employers with very limited exceptions. (Some Federal government employers and violators of certain immigration laws may be ordered to participate).

**Why should I consider participating in E-Verify?**

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce.

**How do I register for participation in E-Verify?**

You can register online for E-Verify at <https://e-verify.uscis.gov/enroll/>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. For example, an employer may choose to designate one site to perform the verification queries for newly hired employees on behalf of the entire company. Only one MOU would need to be signed for this option. An employer may also choose to have each site perform their own verification queries. This option requires each site performing verification queries to register and to submit an MOU to participate in the program.

**Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?**

Each site that will perform the employment verification queries must go through the registration process and sign an individual MOU.

**If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?**

Yes, you can choose which sites to enroll. However, each site that has signed an MOU must verify the status of **all** new hires for that site. A new MOU is required only for a new site performing verification queries. If a central location, which is already registered, does the verification queries, then the company would only need to amend the number of hiring sites.

**I am an employer with multiple hiring sites. Can one site verify everyone? How?**

Yes, one site may verify new hires at all sites. When registering, the individual at the site that will be verifying new hires should select “multiple site registration” and give the number of sites per State it will be verifying.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

### **What is an E-Verify Designated Agent?**

An E-Verify Designated Agent is a liaison between E-Verify and employers wishing to participate, but who choose to outsource submission of employment eligibility verification queries for newly hired employees. The E-Verify Designated Agents conduct the verification process for other employers/clients. An E-Verify Designated Agent must register on-line and sign an MOU with SSA and DHS. Once the MOU is approved, the E-Verify Designated Agent can then begin registering employers/clients who have designated it to perform the company's verification services. Each employer/client will also be required to sign an MOU and will have a unique E-Verify client number.

### **What is an E-Verify Corporate Administrator?**

An employer has the option to designate an employee as a Corporate Administrator. A Corporate Administrator is someone who has management oversight authority of the employer's hiring sites that participate in the program but generally does not perform employment eligibility verification queries. The Corporate Administrator role enables oversight of all the company sites participating in E-Verify. To become a Corporate Administrator, an individual only needs to register and does not need to sign an MOU. Once registered, this individual will be able to register company sites, add and delete users at company sites, and view reports generated by company sites. The Corporate Administrator, however, does not submit queries for verification.

### **After an employer registers, how does E-Verify work?**

Using an automated system, the program involves verification checks of SSA and DHS databases. The E-Verify MOU, User Manual and Tutorial contain instructions and other related materials on E-Verify procedures and requirements. Once the user has completed the tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

### **Can I verify the immigration status of a new hire that is not a U.S. citizen?**

No. E-Verify only verifies a new hire's employment eligibility, not his or her immigration status.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**What information is required to conduct an E-Verify initial verification?**

After hiring a new employee and completing **Form I-9**, required for all new hires (regardless of E-Verify participation), one must submit a query that includes information from sections 1 and 2 of Form I-9, including the employee's name, date of birth, Social Security account number (SSN), the citizenship status he or she attests to, an A# or I-94# (if applicable), the type of document provided on Form I-9 to establish work authorization status and proof of identity, and its expiration date (if applicable). Response to the initial query is sent within seconds of submitting the query. Documents presented for Form I-9 identification only purposes (documents from "List B") to E-Verify employers must have a photograph.

**What is the required timeframe for conducting an employment eligibility check on a newly hired employee?**

Employers must make verification inquiries within three business days of hiring.

**When may an employer initiate a query under E-Verify?**

The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete Form I-9. The employer must initiate the query no later than the end of three business days after the new hire's actual start date.

Although an employer may initiate the query before a new hire's actual start date, it may not pre-screen applicants and may not delay training or an actual start date based upon a tentative non-confirmation or a delay in the receipt of a confirmation of employment authorization. An employee should not face any adverse employment consequences based upon an employer's use of E-Verify unless a query results in a final non-confirmation. In addition, an employer cannot use an employment authorization response to speed up an employee's start date. This would be unequal treatment to use E-Verify results to accelerate employment for this employee compared to another who may have received a tentative non-confirmation.

For example, Company X always assigns a start-date to new employees that are two weeks after the employee has submitted an approved drug test. After the employee has accepted a job with Company X, and after the employee and Company X complete Form I-9, the company can initiate the E-Verify query. However, the company cannot speed up or delay the employee's start-date based upon the results of the query (unless the program issues a final non-confirmation, in which case the employee should not be further employed).

Employers must verify employees in a non-discriminatory manner, and may not schedule the timing of queries based upon the new hire's national origin, citizenship status, race, or other prohibited characteristic.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?**

Currently, USCIS does not offer this service, but several private companies do.

**Which employees should be verified through the system?**

As a participant in E-Verify, employers are required to verify all newly hired employees, both U.S. citizens and non-citizens. Employers may not verify selectively, and must verify all new hires while participating in the program. The program may not be used to prescreen applicants for employment, go back and check employees hired before the company signed the MOU, or re-verify employees who have temporary work authorization.

**Is there a “batch access” method in the system?**

Yes, it is called “Web-services” and is a real-time batch method. It requires a company to develop an interface between its personal system or electronic I-9 system and the E-Verify database. For more information and help with design specifications, please contact USCIS at **1-888-464-4218**.

**Can I terminate my participation in E-Verify at any time?**

Yes, you may choose to leave E-Verify at any time.

**Does participation in E-Verify provide safe harbor from worksite enforcement?**

No. Participation in E-Verify does not provide protection from worksite enforcement. However, an employer who verifies work authorization under E-Verify is presumed to have not knowingly hired an unauthorized alien.

**What is U.S. Passport Photo Check?**

U.S. Passport Photo Check is an enhancement to E-Verify that expands the program’s photo-matching efforts. Passport Photo Check enables E-Verify to check the validity and authenticity of all U.S. Passports and Passport Cards presented by employees for the Form I-9 process. E-Verify checks the passport information and photograph against Department of State records.

**How can I find out more about E-Verify?**

To find out more about E-Verify, please visit [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) or contact USCIS at **1-888-464-4218**.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about E-Verify as it applies to Federal Contractors

### General FAQs

- [As a federal contractor, am I required to participate in E-Verify?](#)
- [My company was just awarded a federal contract and the rule is now in effect. When is my company required to enroll in E-Verify?](#)
- [How do I enroll my company in E-Verify?](#)
- [How much will it cost my company to enroll in E-Verify?](#)
- [My company is required to use E-Verify as a federal contractor for the first time. How do I proceed?](#)
- [My company enrolled in E-Verify, but did not enroll us as a federal contractor. Does my company need to re-enroll to comply with this rule?](#)
- [My company has already been using E-Verify for more than 90 days. When must we begin verifying existing employees assigned to work on a federal contract that contains the FAR E-Verify clause?](#)
- [My company's federal contract has ended. May we continue to use E-Verify?](#)
- [My company's federal contract has ended. Do we need to notify USCIS if we no longer want to participate in E-Verify?](#)
- [What is the E-Verify clause?](#)
- [What is the acquisition threshold for this rule?](#)
- [Does the rule apply to subcontracts?](#)
- [Does the rule extend to contracts outside the U.S.?](#)
- [Does the rule apply to existing indefinite-delivery/indefinite-quantity contracts?](#)
- [What types of prime contracts are exempt from the rule?](#)
- [What is considered to be a COTS item?](#)
- [Are contracts for agricultural and food products exempt from the rule?](#)
- [As a federal contractor, which employees may I verify through the E-Verify system?](#)
- [What is an "employee assigned to the federal contract"?](#)
- [My employee is working on a contract for a minimal amount of time. Is he or she subject to E-Verify?](#)
- [One of my employees was run through E-Verify by a previous employer. Do I need to run this employee through E-Verify again?](#)
- [One of my employees was previously run through E-Verify by my company. Do I need to run this employee through E-Verify again?](#)
- [What employees are not considered to be directly performing work under a contract and therefore excluded?](#)
- [My employee has been previously confirmed as work authorized through E-Verify but is moving to another contract. Do I need to run him or her through E-Verify again?](#)
- [Are there any exceptions to verify employees with certain credentials and security clearances?](#)

FAQs continue on next page

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

- [Can my subcontractor verify under my MOU?](#)
- [May I verify my entire workforce?](#)
- [How do I notify DHS if I plan to verify my entire workforce?](#)
- [May I use E-Verify prior to making a job offer to a job applicant?](#)
- [Does participation in E-Verify provide safe harbor from work site enforcement?](#)
- [If my company participates in E-Verify, are we required to notify applicants of our participation?](#)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**As a federal contractor, am I required to enroll in E-Verify?**

Yes. Beginning September 8, 2009, certain federal contractors and subcontractors will be required to use the E-Verify system. For more information, please visit [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). You may also call 1-888-464-4218 or email [e-verify@dhs.gov](mailto:e-verify@dhs.gov).

**Note:** An employer's E-Verify Designated Agent can email any questions to [DAsupport@dhs.gov](mailto:DAsupport@dhs.gov). The normal response time is two business days.

**My company was just awarded a federal contract and the rule is now in effect. When is my company required to enroll in E-Verify?**

When a contractor wins the bid on a federal contract that contains the FAR E-Verify clause, the contractor and any covered subcontractors on the project are required to enroll in the E-Verify program within 30 calendar days of the contract or subcontract award date.

Usage of E-Verify also applies to indefinite-delivery/indefinite-quantity contracts modified after September 8, 2009 on a bilateral basis in accordance with FAR 1.108(d)(3) to include the clause for future orders. The FAR rule provides that if the remaining period of performance extends at least six months after the final rule effective date, and the amount of work or number of orders expected under the remaining performance period is substantial, then the contract should be modified to include the clause.

**How do I enroll my company in E-Verify?**

Before you can start using E-Verify, you need to enroll your company in the program. When you enroll your company, you will be asked to provide basic contact information for your company and agree to follow the rules of the program. At the end of the enrollment process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between your company and DHS.

You can register your company at the Employer Registration Link in the Related Links at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

During the E-Verify company enrollment process, you will be asked "Which category best describes your organization?" If you have been awarded a federal contract after September 8, 2009, you should select "federal contractor" from the drop-down box. Once you have indicated that you are a federal contractor, the system will then prompt you to identify the federal contractor category (e.g., institutions of higher education; state and local governments and governments of federally recognized Indian tribes; and certain sureties) that best describes your organization along with what groups of your current employees you plan to verify (i.e., current employees assigned to the federal contract or your entire workforce).

Once you have completed the enrollment process, USCIS will review your information and activate your account. After the account is activated, you will receive an email with your login instructions, user ID, and password.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**How much will it cost my company to enroll in E-Verify?**

Nothing; E-Verify is free. It is the best means available for determining employment eligibility of new hires and the validity of their Social Security Numbers.

**My company is required to use E-Verify as a federal contractor for the first time. How do I proceed?**

If your company has not yet enrolled in E-Verify, then you have 30 days from the date of contract award to enroll and 90 days from the date you enroll with E-Verify to initiate verification queries for employees already on your staff who will be working on the contract and to begin using the system to verify newly hired employees. After this 90-day phase-in period, you will be required to initiate verification of each newly hired employee within 3 business days after their start date. To meet this three-day requirement, employers may initiate verification of a newly hired employee before their start date if the employee has accepted the job offer and filled out the Form I-9. Please note that pre-screening of job applicants is not allowed; the system may be used for new hires only after the employee has been offered the job and has accepted. Please also remember that you must continue to use E-Verify for the life of the contract for all your new hires, whether or not they are employees assigned to the contract, unless certain exceptions apply.

**My company enrolled in E-Verify, but did not enroll us as a federal contractor. Does my company need to re-enroll to comply with this rule?**

No. You do not need to enroll again, but you will need to update your company profile through the Maintain Company page. Please log in to E-Verify, go to the Maintain Company page, and select the option indicating you are a federal contractor. Once you designate your organization as a federal contractor, all users (including yourself) will need to take a brief federal contract tutorial that explains the new policies and features that are unique to federal contractors. When the employer changes its profile to indicate “federal contractor” it will not be able to proceed with processing cases in E-Verify until it has taken the refresher tutorial.

**My company has already been using E-Verify for more than 90 days. When must we begin verifying existing employees assigned to work on a federal contract that contains the FAR E-Verify clause?**

If your company has been enrolled in E-Verify for more than 90 days, then you are required to continue to initiate verification of newly hired employees within three business days of their start date, but you have 90 days from the contract award date to begin using E-Verify for each employee already on your staff who are assigned to the contract. Your transition to using the system as a federal contractor does not allow you to stop using E-Verify for your new hires on the standard three-day schedule. The 90-day window in the FAR rule to start using E-Verify for new hires applies to new E-Verify users and is intended to provide additional implementation time.

Please remember that you are required to continue using E-Verify throughout the duration of your federal contract for all new hires, whether or not they are employees assigned to the contract, unless your company falls under one of the exceptions to this policy.

**My company's federal contract has ended. May we continue to use E-Verify?**

Yes. Your company may continue to use E-Verify but you should update your company profile through the Maintain Company page. Additionally, you will no longer be able to run existing employees through E-Verify.

**My company's federal contract has ended. Do we need to notify USCIS if we no longer want to participate in E-Verify?**

Yes. Federal contractors who no longer wish to participate in E-Verify after a contract has ended can terminate their participation by selecting the "request termination" link in the E-Verify system. If your company fails to do so then the terms of the MOU remain in place.

**What is the E-Verify clause?**

The rule requires the insertion of the E-Verify clause into applicable federal contracts, committing Government contractors to use E-Verify for their new hires and all employees (existing and new) assigned to any given federal contract.

**What is the acquisition threshold for this rule?**

The rule requires the insertion of the E-Verify clause for prime federal contracts with a period of performance longer than 120 days and a value above the simplified acquisition threshold (\$100,000).

**Does the rule apply to subcontracts?**

The rule only covers subcontractors if a prime contract includes the clause. For subcontracts that flow from those prime contracts, the rule extends the E-Verify requirement to subcontracts for services or for construction with a value over \$3,000.

**Does the rule extend to contracts outside the United States?**

The rule applies only to employees working in the United States, which is currently defined to include the fifty States and the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

**Does the rule apply to existing indefinite-delivery/indefinite-quantity contracts?**

Existing indefinite-delivery/indefinite-quantity contracts should be modified by Contracting Officers on a bilateral basis in accordance with FAR 1.108(d)(3), to include the clause for future orders if the remaining period of performance extends at least six months after the final rule effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.

[Back to](#) [Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

### What types of prime contracts are exempt from the rule?

The rule exempts:

- Contracts that include only commercially available off-the-shelf (COTS) items (or minor modifications to a COTS item) and related services;
- Contracts of less than the simplified acquisition threshold (\$100,000);
- Contracts less than 120 days; and
- Contracts where all work is performed outside the United States.

### What is considered to be a COTS item?

A COTS item is a commercial item that is sold in substantial quantities in the commercial marketplace and is offered to the government in the same form that it is available in the commercial marketplace, or with minor modifications.

### Are contracts for agricultural and food products exempt from the rule?

Nearly all food and agricultural products fall within the definition of “commercially available off-the-shelf (COTS)” items. Federal contracts for COTS items are exempt from the rule. Federal contracts for food and agricultural products shipped as bulk cargo, but that otherwise would be considered COTS items, such as grains, oils and produce are also exempt. Subcontracts that only provide supplies, such as food, are exempt from the rule.

[Back to](#) [Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**As a federal contractor, which employees may I verify through the E-Verify system?**

As a federal contractor participant in E-Verify, you are required to use E-Verify for:

- All new employees, following completion of the Employment Eligibility Verification Form I-9 (Form I-9); and
- All existing employees who are classified as [“employees assigned to the contract.”](#)

Employees whom you have already verified through E-Verify should not be re-verified. However, an employee’s previous employment authorization through E-Verify from another employer does not satisfy your obligation to use E-Verify once you have hired them.

Those who have an active federal agency HSPD-12 credential or who have been granted and hold an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual do not need to be verified.

Under the rule, only those employers that win a contract or subcontract that includes the E-Verify clause may run existing employees through E-Verify. A federal contractor must verify their new hires and the employees who are assigned to the contract, and may elect to also verify their entire workforce.

There are some exceptions to the requirement to use E-Verify for all new hires. The exceptions apply to institutions of higher learning, state and local governments, governments of federally recognized Indian tribes and for sureties performing under a takeover agreement with a federal agency. Under the rule, such entities may choose to only use E-Verify on new and existing employees assigned to the covered federal contract.

**What is an “employee assigned to the federal contract”?**

The rule defines an “employee assigned to the federal contract” as any employee hired after November 6, 1986, who is directly performing work in the United States under a contract that includes the clause committing the contractor to use E-Verify. An employee is not considered to be directly performing work under the contract if the employee normally performs support work, such as indirect or overhead functions, and does not perform any substantial duties under the contract.

**My employee is working on a contract for a minimal amount of time. Is he or she subject to E-Verify?**

Yes. The rule does not exempt employees based on the intermittent nature of the work or the length of time spent performing the work.

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

**One of my employees was run through E-Verify by a previous employer. Do I need to run this employee through E-Verify again?**

Yes. Under the rule, federal contractors are required to enter the worker's identity and employment eligibility information into the E-Verify system following completion of the Form I-9 at the time of hire.

**One of my employees was previously run through E-Verify by my company. Do I need to run this employee through E-Verify again?**

No. Once an employee has been run through E-Verify they should not be re-verified through E-Verify by the same employer.

**What employees are not considered to be directly performing work under a contract and therefore excluded?**

Those employees who normally perform support work, such as indirect or overhead functions, and do not perform any substantial duties applicable to the contract, would be excluded.

**My employee has been previously confirmed as work authorized through E-Verify but is moving to another contract. Do I need to run him or her through E-Verify again?**

No. Once an employee has been run through E-Verify and employment authorization has been confirmed, the employee should not be re-verified through E-Verify again by the same employer.

**Are there any exceptions to verify employees with certain credentials and security clearances?**

Yes. The federal contractor is not required to perform employment verification using E-Verify for any employee who has been granted and holds an active federal agency HSPD-12 compliant credential or a U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual. The employer still must complete Form I-9 at the time of hire for such employees.

**Can my subcontractor verify under my MOU?**

No. Each employer must enter into its own MOU with DHS and SSA.

[Back to Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

**May I verify my entire workforce?**

Yes. Federal contractors and subcontractors have the option of verifying their entire workforce, both new hires and existing employees – including those not assigned to a federal contract. If your company elects to do this, you must notify DHS by updating your company profile through the Maintain Company page if you are a current participant, or during enrollment if you are a new participant. A federal contractor that chooses to exercise this option must initiate an E-Verify query for each employee in the contractor's entire work force within 180 days of updating its company profile.

**How do I notify the Department of Homeland Security if I plan to verify my entire workforce?**

If your company plans to verify its entire workforce, you must notify the Department of Homeland Security (DHS) by updating your company profile through the "Maintain Company" page. If your company is already enrolled in E-Verify and plans to verify its entire workforce, your program administrator must notify the Department of Homeland Security (DHS) by updating your company profile through the Maintain Company page if you are a current participant, or during enrollment if you are a new participant.

Once you have indicated you are a federal contractor, the system will then prompt you to identify the federal contractor category that best describes your organization. You will then have the option to select "all new hires and existing employees" indicating that you wish to verify your entire workforce through E-Verify. A federal contractor that chooses to exercise this option must initiate verifications for the contractor's entire work force within 180 days of updating their company profile.

**May I use E-Verify prior to making a job offer to a job applicant?**

No. All users, including federal contractors, are prohibited from using E-Verify prior to a job offer and acceptance by the applicant. By signing the MOU to participate in E-Verify, all employers agree not to use E-Verify for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by the MOU. Should the employer use E-Verify procedures for any purpose other than as authorized by the MOU, the employer may be subject to appropriate legal action and termination of its access to the E-Verify systems.

**Does participation in E-Verify provide safe harbor from work site enforcement?**

No. However, using E-Verify creates a rebuttable presumption that your company has not knowingly hired an unauthorized alien. Participation in the program does not provide a "safe harbor" from worksite enforcement, however.

**If my company participates in E-Verify, are we required to notify applicants of our participation?**

As an employer participating in E-Verify, you are required to post the notice provided by DHS indicating your company's participation in the E-Verify program as well as the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice. The posting must take place in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system. Once you are enrolled, and able to log into the E-Verify online system, these notices can be found in the "On-line Resources" section.

**Information about Other Responsibilities you may have, as an employer, under U.S. Immigration law**

**OVERVIEW**

Federal law prohibits discrimination in hiring a prospective employee based upon the individual's immigration status or citizenship.

**WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)**

[Information about how to avoid discrimination against individuals who have been authorized to work in the U.S. and information about the penalties for discrimination](#)

[Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee](#)

[Information about the requirement to pay employees fair and equitable wages](#)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about how to avoid discrimination against individuals who have been authorized to work in the U.S. and information about the penalties for discrimination

### OVERVIEW

Form I-9 lists the acceptable documents that a prospective employee may provide to the employer in order to establish his eligibility to work in the United States. The prospective employee is entitled to choose the document or documents that he presents to the employer. The employer cannot demand specific documents from a prospective employee or specify which documents the individual must provide. To avoid discrimination based on an individual's immigration status or citizenship, the employer should treat all people equally when announcing a job, taking applications, performing interviews, making job offers, verifying the individual's eligibility to work, hiring of the individual, and termination of the individual's employment. U.S. Immigration law prohibits discrimination, on the basis of citizenship, against protected individuals. Protected individuals include citizens or nationals of the United States, lawful permanent residents, temporary residents, and persons who have been granted refugee or asylee status. The U.S. Department of Justice has an Office of Special Counsel. This Office investigates and prosecutes charges of unlawful employment practices related to immigration.

### General FAQs

- [Are there any penalties for unlawful discrimination?](#)
- [What if an employee does not have a document from List A?](#)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)

## Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee

### OVERVIEW

USCIS grants certain alien workers an H-1B, H-2B, or H-2R immigration status. If the employer dismisses an alien with such a status prior to the expiration date of the individual's authorized period of stay, the employer is required to pay the reasonable costs for the individual's return transportation abroad. If the alien employee voluntarily terminates his employment prior to the expiration date of his authorized period of stay, the alien is not considered as having been "dismissed," and the employer is not required to pay for the individual's return transportation.

### General FAQs

- [What is a U.S. employer held liable for once an H-1B, or H-2B nonimmigrant is employed?](#)
- [What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?](#)
- [What is a U.S. employer held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?](#)

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

**What is a U.S. employer held liable for once an H-1B, or H-2B nonimmigrant is employed?**

Under immigration law, a U.S. employer is liable for the reasonable costs of return transportation abroad of the H-1B, H-2B, or H-2R if they terminate the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

**What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?**

Under immigration law, both the U.S. employer and the nonimmigrant are “jointly and severally” liable for the reasonable costs of return transportation abroad of the O or P nonimmigrant if the employer terminates the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

**What is a U.S. employer or petitioner held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?**

An employer or petitioner applying for an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN has employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

[Back to](#)[Form I-9](#)[USCIS Programs](#)[Employer Responsibilities](#)

## Information about the requirement to pay employees fair and equitable wages

### OVERVIEW

All workers, regardless of their immigration status, are afforded the full benefits and protections of U.S. labor laws. In certain cases, to employ foreign nationals, the employer must file a Labor Condition Application or an Application for Alien Employment Certification with the Department of Labor. On these applications, the employer must attest that, at a minimum, the employer will pay the prevailing wage for the position and the employer will maintain the working conditions that are being offered. Any petition filed on behalf of a foreign national, which requires an offer of employment, must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage.

For information about the employer's attestation requirement to pay fair and equitable wages, please see the U.S. Department of Labor's website: [www.foreignlaborcert.doleta.gov](http://www.foreignlaborcert.doleta.gov)

[Back to](#)

[Form I-9](#)

[USCIS Programs](#)

[Employer Responsibilities](#)