

The 2023 I-9 Rollercoaster: Top 5 Form I-9 Updates and Tips to Help You Prepare for 2024

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Today's Presenters



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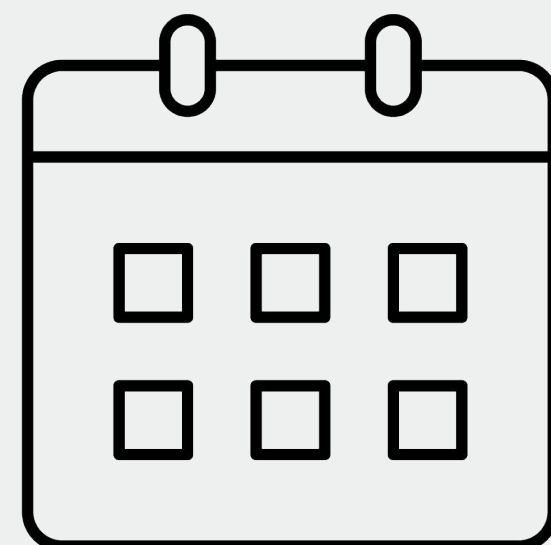


To set the stage for today's discussion...



Today's Agenda: Year in Review

2023



- 1. Changes in I-9 Documentation**
- 2. Review of I-9 Penalty Decisions**
- 3. End of COVID Era I-9 Flexibilities**
- 4. New Virtual Document Review**
- 5. E-Verify Developments**

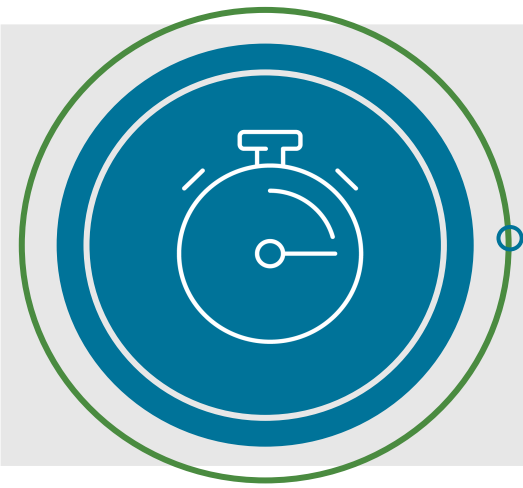
But wait, there's more....

- How Equifax Can Help**
- Questions and Answers**



Changes in I-9 Documentation (For Lawful Permanent Residents)





Can you ever accept an *expired* green card for Form I-9 purposes?

LISTS OF ACCEPTABLE DOCUMENTS

All documents containing an expiration date must be unexpired.
 * Documents extended by the issuing authority are considered unexpired.
 Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.
 Examples of many of these documents appear in the Handbook for Employers (M-274).

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For an individual temporarily authorized to work for a specific employer because of his or her status or parole: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the individual's status or parole as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security For examples, see Section 7 and Section 13 of the M-274 on uscis.gov/i-9-central . The Form I-766, Employment Authorization Document, is a List A, Item Number 4. document, not a List C document.
		8. Native American tribal document		
		9. Driver's license issued by a Canadian government authority		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
Acceptable Receipts May be presented in lieu of a document listed above for a temporary period. For receipt validity dates, see the M-274.				
• Receipt for a replacement of a lost, stolen, or damaged List A document.	OR	Receipt for a replacement of a lost, stolen, or damaged List B document.		Receipt for a replacement of a lost, stolen, or damaged List C document.
• Form I-94 issued to a lawful permanent resident that contains an I-551 stamp and a photograph of the individual.				
• Form I-94 with "RE" notation or refugee stamp issued to a refugee.				

*Refer to the Employment Authorization Extensions page on [I-9 Central](#) for more information.

Form I-9 Edition 08/01/23 Page 2 of 4

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*Refer to the [Employment Authorization Extensions page](#) on I-9 Central for more information.



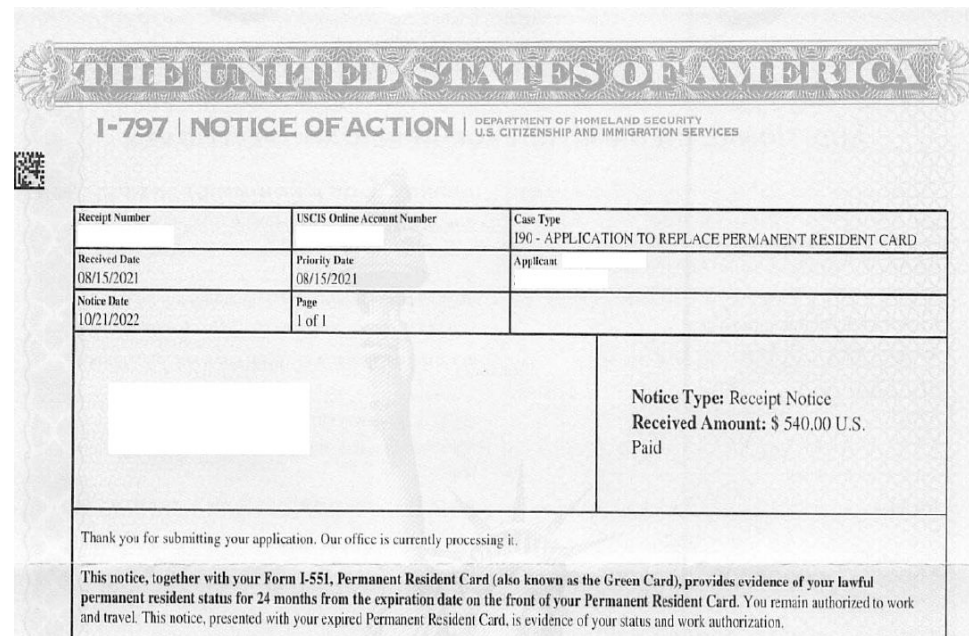
Form I-9: Expired Green Card Scenarios

Expired green card



+

I-797 Receipt



New in 2023: Extended Time Frames

Type	Form I-9 Use	How long?	Reverification
Extension (I-90)	List A	Up to 24 months	No reverification
Naturalization (N-400)	List A	Up to 24 months	No reverification
Removal of Conditions (I-751 or I-829)	List C (+ List B as well)	Up to 48 Months	Yes, any List A or List C document

For more information:

<https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/70-evidence-of-employment-authorization-for-certain-categories/71-lawful-permanent-residents-lpr>

Call to Action: I-9 Documentation



1. Review your internal I-9 training
2. Ensure you're keeping up with latest I-9 policy updates
3. Consider document review alternatives



Tip: Visit I-9 Central for the latest I-9 Policy Changes

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



Review of 2023 I-9 Penalty Decisions and Settlements



The Case of Good Faith, Too Late

Summary



Issued: August 29, 2023

Industry: Oil and Gas

Total Penalties: \$83,500

Per I-9 Fine: Variable based on error type

Source: <https://www.justice.gov/eoir/page/file/1595306/download>

Notable Issues

- 100% error rate for 55 I-9s (both current and recently terminated employees)
- Company completed new I-9s for all current employees after ICE issued a Notice of Inspection
- Company liable for all errors - “good faith” reduction in fines may be appropriate when employer takes steps to fix an issue **before** an investigation



The Case of Unfair I-9 Practices

Summary



Issued: November 20, 2023

Industry: Transportation

Total Penalties: \$700,000

Per I-9 Fine: N/A

Source:

<https://www.justice.gov/opa/pr/justice-department-secures-agreement-tennessee-trucking-companies-resolve-allegations-hiring>

Notable Issues

- DOJ alleged that companies routinely required Lawful Permanent Residents and non-citizens authorized to work to produce List A documents
- DOJ initiated the investigation based on their own intel (often from other government agencies)
- Companies also agreed to train their HR staff and submit to ongoing monitoring for 3 years



The Case of the Large Potential Penalty

Summary



Issued: Sept 20, 2023

Industry: Staffing

Total Penalties: \$5.7 million

Per I-9 Fine: N/A

Notable Issues

- More than 2,000 alleged I-9 violations for failure to ensure proper completion of the I-9s, or, in the alternative, failure to prepare the I-9s
- ICE and company requested to delay the proceedings while they explore settlement discussions
- Court agreed to temporarily pause the proceedings until January, 2024

Source:

<https://www.justice.gov/eoir/page/file/1596071/download>



Call to Action: I-9 Remediation



1. Consider an I-9 Self Audit
2. Correct issues before an investigation
3. Look for potential pattern or practice violations



Tip: the agencies have published guidance on conducting a self audit

<https://www.justice.gov/crt/file/798276/download>

An important factor in assessing an employer's good faith is the steps they took before ICE showed up.



The End of COVID Era I-9 Flexibilities



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COVID Virtual I-9 Flexibilities Come to an End



COVID-19 Virtual Policy Ends as of July 31, 2023

Employers taking physical proximity precautions due to COVID-19 were permitted to examine documents remotely followed by an in-person inspection when normal operations resume

Employers instructed to complete any necessary follow-up inspections

On May 4, 2023, Immigration and Customs Enforcement (ICE) announced that employers must complete the required follow-up inspections by **August 30, 2023**

Certain employers may also use the new virtual process to conduct the inspection if the employee was submitted to E-Verify

Source: <https://www.ice.gov/news/releases/ice-updates-form-i-9-requirement-flexibility-grant-employers-more-time-comply>



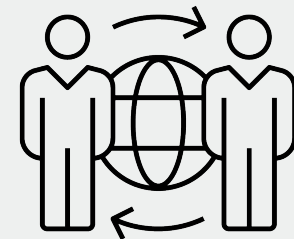
COVID Follow-up Inspections: Key Takeaways



Scope of Review

Only applies to I-9 documents that were inspected through video, email, or digital upload between Mar. 20, 2020, through July 31, 2023

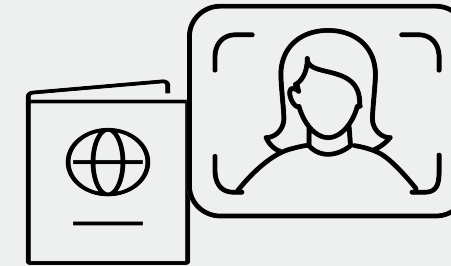
<https://www.ice.gov/news/releases/ice-updates-for-m-i-9-requirement-flexibility-grant-employers-more-time-comply>



Follow-up Inspections

If a different reviewer is used, ICE prefers a new Section 2 to be completed during the follow-up inspection

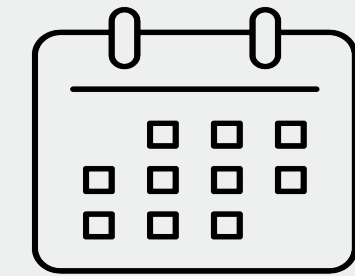
<https://www.ice.gov/doclib/coronavirus/DHSI-9extensionGuidance.pdf>



Different Documentation

Employees can present different documentation during the follow-up review (in which case, ICE prefers a new Section 2)

<https://www.ice.gov/doclib/coronavirus/DHSI-9extensionGuidance.pdf>



Good Faith Efforts

ICE has encouraged employers to conduct the follow-up inspections, even if they missed the Aug 30 deadline

<https://www.dhs.gov/news/2023/07/21/dhs-provide-s-employers-certainty-and-new-flexible-option-employment-eligibility>



Call to Action: COVID-19 Follow-up Inspections



1. Ensure you've completed all of your follow-up inspections
2. Take advantage of a potential "good faith" exception before too much time passes
3. Annotate I-9s of terminated employees whose documents could not be inspected



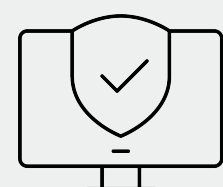
Virtual I-9 Process (Alternative Procedure for Inspecting Documents)



Virtual Review and the New Form I-9

Effective August 1, 2023, qualifying employers may use an **alternative procedure** for examining Form I-9 documents **virtually** in lieu of a physical in-person inspection

Virtual Key Requirements



Must use E-Verify at participating hiring sites



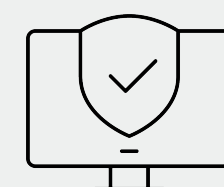
Remote document review and live video interaction



Must retain document copies



Check the alternative procedure box on the I-9

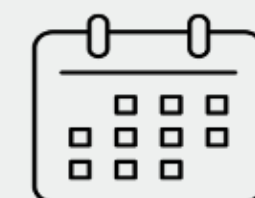


New Form I-9

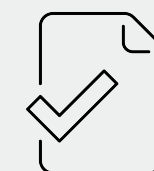
Sections 1 and 2 are on one page (in a condensed format)



Supplement A: Preparer and/or Translator
Supplement B: Reverification and Rehire



Must be used starting November 1, 2023



Includes new checkbox in Section 2 and Supplement B



Implementing Virtual Review



Non-discriminatory document review

Determining when documentation is reasonably genuine while avoiding improper rejections

Timely I-9 completion

Ensuring that all of the new requirements occur in the right order and on-time (upload, examination, live video, Section 2 completion)

E-Verify compliance

Keeping up with all requirements to remain “in good standing”

Audit preparedness

Documenting your virtual process and responses

Requirements that are inherent in the regulations but may not be fully considered



Call to Action: New Virtual Option



1. Review the requirements and overall workflow
2. Decide if it's right for your organization
3. Devise a plan for implementation (and consider an outsourcing option)



E-Verify Obligations on the Rise



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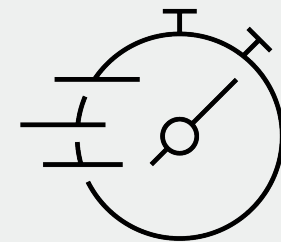
E-Verify Developments in 2023



State Laws

Florida now requires E-Verify for private employers with 25 or more employees

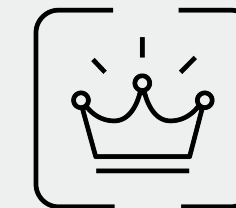
<https://www.flsenate.gov/Committees/BillSummaries/2023/html/3092>



SSA Referred Cases

E-Verify mismatch (TNC) cases referred between March 2, 2020 and July 14, 2022 must have been resolved no later than September 29, 2023

<https://www.e-verify.gov/social-security-administration-resumes-e-verify-operations>



E-Verify Good Standing

In order to use the virtual review process, employers must remain in “good standing” with all E-Verify requirements

<https://www.uscis.gov/i-9-central/remote-examination-of-documents>

The latest E-Verify news can be found here:
<https://www.e-verify.gov/about-e-verify/whats-new>



Call to Action: E-Verify Obligations



1. Check for pending TNCs and FNCs to ensure timely resolution
2. Review your organization's overall E-Verify process
3. If not using E-Verify across the organization, review state requirements



I-9 Anywhere Employer Features

I-9 Anywhere helps you:



Simplify workflows

Engage local and/or virtual completers

More safely capture documents

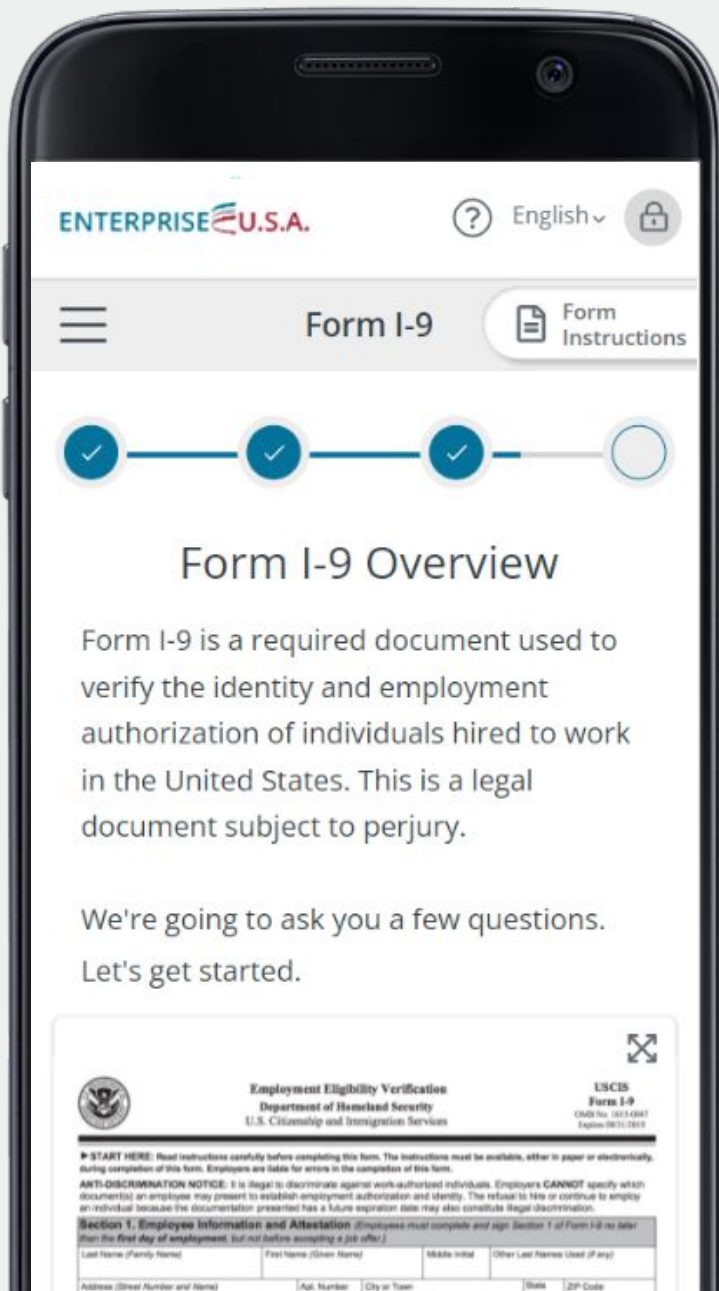
Standardize the Form I-9 completion process



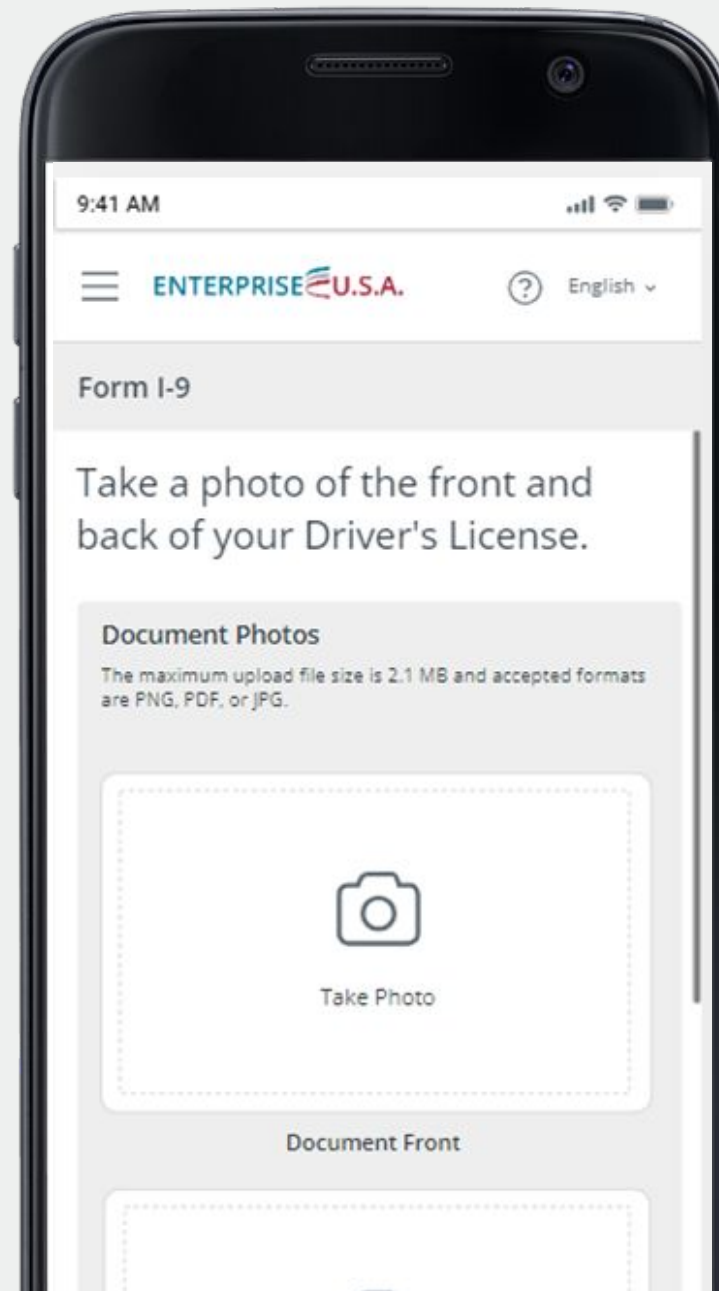
How It Works For Your Employees

Virtual I-9 completion with I-9 Anywhere is as easy as 1,2,3...

1 Complete Section 1 from any device



2 Easily upload verification documents



3 Join video call with virtual completer



Help to Gain Greater Confidence in Your Form I-9s

I-9 Inspect helps you review your Forms I-9 that have been digitally converted to help you detect and prioritize potential issues while simplifying the process of making your corrections and helping you reduce your organization's risk.

I-9 Inspect helps identify possible errors and helps you remediate your information with guided prompts and notifications

Changes are tracked with a detailed audit trail, resulting in form storage in your locations that helps you become more audit-ready



Q&A

Next Steps



1 SURVEY

Complete the survey through the webinar console



2 CONTACT

Want to talk to someone about your I-9s or onboarding processes? Click on the “Want to Get In Touch” button on your webinar console or contact us at:

workforce.equifax.com/contact



3 CONNECT

Subscribe to Let’s Talk HR for updates:
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