



## **I-9 Compliance: The Basics and Beyond Webinar**

On November 10, 2011, [Sanford Posner](#) conducted an excellent webinar on I-9 compliance. Here's a summary of the many questions and answers from the program.

**Q:** I discovered my predecessor was keeping copies of eligibility documents and was not always writing the information in Section 2 in the appropriate A, B, C lists. I have always been told you must write the information on the I-9 form. If that is correct, what would your recommendation be for "repairing" these I-9s? Some of these I-9s go back 20 years.

**A:** The actual form must be completed and stapling the documents to the back of the I-9 does not count as completing the form. Use a different color ink than was used to complete the original form and indicate the updates were made during a self-audit and initial and date the amendments.

**Q:** I just recently discovered that the I-9 forms that we have been using have expired. I did go on line and downloaded the current forms. I know I need to replace the old expired ones that are in our employees files with the current ones and I'm not sure how I would go about doing that. Can I have all the employees who were hired since the I-9s expired fill out a current one?

**A:** No need to constantly update the employee's I-9 with a new version of the form. Make sure you use the most current version of the form when you bring on a new employee.

**Q:** So we don't have to backtrack and make the employees who were hired from June 30, 2009 to present date that have completed I-9 with a June 30, 2009 expiration date?

**A:** Yes. That would be fine. Go ahead and make a note on the I-9 about the fact that you saw an error with the form edition during an audit conducted in 2011.

**Q:** You said PO Box numbers are not correct for employee addresses. What about for the employer's address? I find quite a few filled out by my predecessor with the company PO Box. To that end, the company has also relocated since most of the I-9s were completed. Should there be an updated I-9 for all showing the new address?

**A:** You should have a street address for both. You can update I-9's with the current employer address.

**Q:** I have a number of I-9s that were completed years after the employee's start date (some employee's started before 1986). The start date is missing and the employee signatures weren't dated on some. Best practice here to correct?

**A:** You should correct and initial and date the correction. Obtaining signatures from employees who are no longer with the company is not necessary. You should have an I-9 for every employee hired after 1986.

Q: Looks like one employee presented a permanent residence card a couple of years after the original I-9 was completed with a US Passport (no expiration date) and a SS card. They noted the new permanent residence card on a new I-9, but nobody signed as having viewed the document, and the employee was not asked to complete the top portion. They just stapled them together. Since the first two documents would not require re-verification under regulations at the time (2000), should I destroy the extra I-9?

A: I would hold both documents to show that the additional information was obtained during a self audit to maintain I-9 compliance.

Q: I have an employee that presented a foreign passport with and I-94. But no one noted any expiration dates for re-verification, hence not done. He started several years ago. I feel like I should start over on this one and attach a fresh form to the original (good faith effort to correct situation).

A: If the section 3 re-verification has not been completed, then try to complete on the same form before you decide to attach a new one.

Q: Would the ICE care if information was recorded on the form in both list A and B/C (assuming the documents were provided voluntarily)? If it would be an issue, what corrective action should be taken?

A: Strike through the additional information. Over documenting on the I-9 form is a violation.

Q: Can you abbreviate the issuing authority and document title (i.e., Permanent Resident Card or PRC), or state?

A: You can use common abbreviations in order to complete the document.

Q: What address should be used in Section 2 for business address? The location where the employee is actually working or can it be the main company address?

A: I would use the business address where you are holding the I-9 forms; either the local employee address or the main company address.

Q: I have been typing in the information on Section 1 and 2, then employee and supervisor will sign completed form. Is this allowed?

A: Yes.

Q: What is the proper procedure if you determine through an audit that an employee did not complete an I-9 form when they were hired? What if you discover that the employee never signed the original I-9?

A: Have that employee complete the I-9 when you discover the error. If they are no longer a current employee, try sending the form to the former employee if you know where to find them and if it's within the timeframe of when you need to hold the I-9 for the terminated employee.

Q: Referring to the self-audit, I've heard conflicting advice about how to make edits, where edits are possible. What is the best practice on this?

A: You should use a different color pen than was originally used to fill out the form, make a single line through incorrect information, then write in the correct information in the adjacent margin, and initial/date the correction.

Q: What if we have already used white-out to correct an I-9? Should we have employee fill out a new one or keep the one with white-out on it?

A: Make a note to the file that it was a training error to have used the white out. Also, make sure that the data used to complete the I-9 is accurate.

Q: If there are problems with names (Section 1 versus Section 2) on old I-9's of current employees, how do we correct?

A: Have the employee make the correction to the form and date the corrections, provided that the employee is able to provide evidence of their correct name.

Q: If the person who originally completed the I-9 form for the Company forgot to sign it (as the employer), can a different person sign and date it years later? Do they have to look at the person's original documents again?

A: The later person can sign the document. They would not have to review the employee's documents unless it was during a reverification.

Q: If you use an external representative, to verify the I-9 on your company's behalf (because the employee works too far away to come in), how should you notate that the person signing the form is *representing* your company, even if they don't work for your company?

A: You can attach a memo to the completed form. However, if the agent of the company, who does not work for the company, makes an error, then the company will be held responsible.

Q: Would the receipt rule apply for someone who has lost their social security card or had it stolen?

A: Yes.

Q: What if the driver's license is expired? Can we accept that?

A: Every document presented to you must be valid (cannot be expired).

Q: Must you recertify all I-9 forms?

A: Reverification is **not** necessary for *any* identity (List B) documents, US passports, or permanent resident cards. Documents that must be reverified are:

- Foreign passport with I-551 stamp or Form I-94 indicating unexpired employment authorization
- Temporary Resident Card (Form I-688)
- Employment Authorization Card (Form I-688A, I-688B or I-766)
- Employment Authorization Document Issued by DHS/CIS (time-limited & other than a List A document).

Reverifying documents that do not require reverification can subject you to a fine for document abuse.

Q: If the verifying documents expire, do I need to have the employee fill out a new I-9 and get current docs?

A: No, you would complete Section 3 with the new evidence provided by the employee and sign the form.

Q: If we get a new/different set of documents on re-certification, do we have to run those under E-Verify at the time of renewal?

A: You first need to check to see which documents you can re-verify. When reverifying a person's work authorization, you want to go back to your Memoranda of Understanding and to make sure you're running the reverification documents that you're allowed to through the E-Verify system. Typically for work authorizations for renewals the E-Verify system should be able to confirm that the person has work authorization. Renewals of work authorization may not be popping up on the E-Verify system as quickly as they are being issued and that may cause some delays. Go to your Memoranda of Understanding first for guidance.

Q: What can I do for the long-term employees for whom no I-9 exists? Shall I gather the information, seek current documents, signatures, and current date?

A: If the employee began work after 1986, then yes. If they have been an employee since before the IRCA regulations went into effect, then they would not need an I-9 form.

Q: I have an employee who signed their I-9 as a lawful permanent resident. He provided an employment authorization card, a driver's license, and a social security card when hired (voluntarily). The SS card did not say that work authorization was required. Can someone have a work authorization card and be a permanent resident?

A: The person should not have a work authorization card as a U.S. Permanent Resident.

Q: If an employee presents a resident alien card on hire date and then presents a certificate of

naturalization in the future, can we tell the employee it isn't necessary for him to present us with this certificate? Or are we obligated to document it?

A: If by resident alien card, you mean a U.S. Permanent Resident, then no reverification is required.

Q: Does E-Verify replace the I-9 form?

A: No. E-verify is a government tool for employers to have another means to verify an employee's work authorization in the United States.

Q: Do you need have the original I-9 on file, or is a photocopy (legible) acceptable? Is it alright to scan I-9 forms and store them electronically?

A: You can keep a photocopy as long as it is the current form of the I-9 form. On the USCIS website, there are instructions for printing and copying the I-9.

Q: Do you have to save the entire form I-9 or can you just save the page which you must complete?

A: You should save the completed form.

Q: Keep I-9 for one year after termination. But aren't we supposed to keep employment records for longer than that after they are terminated?

A: You should follow the law regarding the retention of employee materials. But the rules for I-9 retention can be different.

Q: How long do we have to hold on to I-9 forms?

A: Keep an I-9 form for three years from the date of hire and one year from the date of termination, whichever date is later.

Q: If we've never utilized E-Verify but plan to start next month, can we vet all current employees via E-Verify using their I-9 that we have on file?

A: The only reason you would want to E-Verify your current workforce is if you're going to be working on a federal contract. It is not a backward-looking system and it is only for new hires.

Q: If we've been keeping copies of ID documents presented by ALL employees are we able to discontinue making copies of IDs going forward?

A: As long as you have a consistent policy, then you can make a change as to whether you will make copies of employee identification documents.

Q: If an employee fills out the paperwork before they start working do they have to wait to complete the I-9 form on the first actual date of employment?

A: The employee should complete the I-9 form on the first day of work.

Q: I have union carpenter employees who could be employees and laid off multiple times in a year. Do I need to complete a new I-9 each time they come back?

A: No, see the above answer for how long you must hold on to an employee's I-9 form. You would only need to update the I-9 as to the rehire date of the returning employee.

Q: South Carolina requires E-Verify. Does the employer have to use E-Verify for an employee who lives in South Carolina but only works in North Carolina?

A: You will want to check with E-Verify FAQ's about out of state employees. Also, you would want to check with the interpretation of South Carolina law on this issue. Typically, the state law will want you to E-Verify all your employees regardless of where they work or live.

Q: What if we get an E-Verify clearance or to work and then later a letter telling the working employee that they may now be nonconfirmed?

A: Review the reason for the new tentative non-confirmation and follow the MOU procedures as it pertains to allowing the employee to address their situation.

Q: In Colorado we have to get a Colorado Affirmation filled out along with copies of the documents we have seen for the I-9. Should we keep that separate from the I-9?

A: If it is an I-9 related document, then keep it with the I-9 form away from your general personnel files. I don't think you will need to set up another file system for the state required forms.