



## The New Form I-9: What's New?

**The new version of the Form I-9 was released by USCIS on Friday, March 8<sup>th</sup>.** The government has indicated that employers should begin using the new form immediately but has allowed a period of 60 days for employers to make the business-related adjustments necessary to begin using the new form, effectively providing a grace period. As noted below, employers may want to consider taking advantage of the grace period to ensure that internal policies and procedures are updated to accommodate the form's changes.

### Why did the form change?

The government has indicated that the form was changed for the following reasons:

- The old form “expired.”
- The expiration gave DHS an opportunity to implement improvements to the form.
- Improvements (according to DHS) include:
  - Adding “helpful” fields such as the employee e-mail address and telephone number;
  - Clarifying the “alien attestation” area of Section 1 and making the text “easier to read and understand”;
  - Adding an area for a proposed 3D barcode to “promote the modernization of USCIS forms”;
  - Giving employers more space; and
  - Making the instructions clearer and easier to understand.

### What changed?

The form (available [here](#)) is now 2 pages long, with 7 pages of instructions. The Lists of Acceptable Documents still occupy a single page. In addition to a number of format/stylistic changes, key substantive changes include the following:

- The instructions are significantly more detailed, including a number of “clarifying” items to help employers avoid mistakes. Highlights include:
  - Instructions indicating that border commuters from Canada and Mexico may use foreign addresses in Section 1 (but that all other employees must use U.S. addresses);
  - Confirmation that P.O. Boxes are not acceptable;
  - A statement that the SSN (for employers who do not use E-Verify), e-mail, and telephone number fields are optional;



- Instructions regarding which foreign nationals must provide passport information in Section 1 (see below);
  - The addition of instructions for minors and disabled employees;
  - In-depth instructions relating to the use of receipts for lost, stolen, and damaged documents; and
  - More detailed instructions relating to deadlines for form completion, review and recordation of document information, reverification, and photocopying documents.
- The form has been updated to look more “official” and to include the DHS seal; this, in combination with certain formatting changes, may help employees take the form more seriously, giving them a better understanding that this is an official government form that is being signed under penalty of perjury.
  - New fields have been added for employees to record telephone numbers and e-mail addresses. These fields are optional.
  - Terminology has changed in an attempt to make the form more user-friendly, reflect a better understanding of cultural norms (“Family Name” in addition to “Last”), and to make fields more gender-neutral (“Other Names Used” instead of “Maiden Name”).
  - Fields have been added for certain foreign nationals to provide passport information in Section 1 of the form. This relates to U.S. Customs and Border Protection’s plans for automation of the I-94 card. Only those foreign nationals who obtained their I-94 documents upon entry to the U.S. (as opposed to having received a tear-off I-94 card as a part of a USCIS approval notice) should provide this data. Others are instructed to write “N/A” in these fields.
  - The signature box for the employee has been improved to prevent employees from signing outside of the box.
  - In most cases, the instructions indicate that fields that do not apply to an employee (or where employees choose not to provide optional information) should be marked “N/A.” While the government may find such instructions helpful, they actually create more opportunities for employers to find themselves making “mistakes” and worrying about possible fines for noncompliance with seemingly arbitrary rules.
  - “Alien #” has been changed to “Alien Registration Number/USCIS Number.” For many, this causes confusion. The numbers are actually the same, but some government-issued documents use different terms to refer to the same number.
  - A 3D barcode box has been added to the form. This is a mysterious box, and it is unclear what the government plans to do with it. All indications suggest that the government may create a “smart” I-9 that employers can complete electronically and that the barcode may allow for electronic reading of the form data.
  - A stop sign has been added between Section 1 and Section 2 to help prevent employees from completing Section 2 of the form.



- Additional dedicated fields for recording “extra” List A documents have been added. These fields may prove helpful to employers who previously struggled with the correct ways to document work authorization for foreign students, certain aliens authorized to work, and lawful permanent residents who have not yet received their green cards. They may cause confusion, however, for others. It is still not clear which document should be recorded first, second, or third.
- The employer’s attestation statement has been changed somewhat. The format has changed, seemingly indicating to employers that they are not necessarily attesting to the employee’s start date (which is helpful when an employee is scheduled to start work in the future, preventing employers from concerns about attesting to something that has not yet occurred).
- Section 3 has been changed to “Section 3, Reverification and Rehires” to make clear that there is no requirement that employers update the form for employee name changes. Recording name changes may continue to be a best practice, but only if handled in such a way as to prevent document abuse claims (requesting documentation *for I-9 purposes* in connection with a name change may be risky).
- The Lists of Acceptable Documents have been updated to make the rules regarding “restricted” Social Security cards clearer, specifically stating that employers must not accept cards that say “not valid for employment,” “valid for work only with INS authorization,” or “valid for work only with DHS authorization.”

### Isn’t the form a lot more complex?

The new form is so much more complex that the government anticipates a **21-minute increase** in the amount of time it will take to complete. The total cost to U.S. employers, individuals, and record keepers of completing this form is expected to exceed \$1.2 billion annually. For more information, see pages 8-9 of [this document](#).

### What should employers do?

Although the government has stated that employers should begin using the new form immediately, it has allowed a period of 60 days for employers to make the business-related adjustments necessary to begin using the new form. This has effectively created a grace period for employers.

With that somewhat clunky guidance, we suggest that employers do the following:

- Consider waiting to use the new form until:
  - You have had a chance to read and digest the revised M-274 Handbook for Employers, available [here](#);
  - You have had a chance to update your company policies and protocols to reflect changes to the form; and



- You have had a chance to provide training (preferably from a qualified attorney) to the individuals responsible for completing the form to ensure that they are aware of the changes and are equipped to properly implement them.
- Review the new form carefully to anticipate questions and issues that may arise.
- Know that mistakes are almost inevitable. But be prepared to fix them and learn from them.
- If you use an electronic I-9 software program, check with your provider to see when the new form will be available. Consider having your immigration attorney review the new form in a test environment to ensure that it complies with all of the relevant rules and regulations.

**Kersey Immigration Compliance, LLC is prepared to offer training webinars, checklists, policies, and other helpful materials to ease your transition to the new Form I-9. The majority of our services are offered at a fixed fee to keep costs predictable. Please contact us to arrange training for your organization.**