

## 1. Introduction

As an employer, the University is required by the Immigration Reform and Control Act of 1986 (IRCA) to complete Form I-9 each time an employee is hired to perform labor or provide services in the U.S. in return for wages or other remuneration. IRCA requires that the:

- Employee fully complete Section 1 of Form I-9 at the time of hire - when the employee physically commences work.
- University hiring official review employee documents and fully complete Section 2 of the I-9 within three business days of the employee's first day of work.

A Form I-9 is **NOT** required for persons who are:

- Hired before November 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;
- Independent contractors; or
- Not physically working on U.S. soil.

## 2. Responsibility for Completing I-9s at UVA

- a. University Human Resources (UHR), specifically Compliance and Immigration Services (CIS), is

responsible for completing I-9s for all wage employees (except student wage employees) and including temps. Also, UHR is responsible for completing I-9s of all staff employees who attend new employee orientation on their first day of work.

- b. Hiring departments are responsible for completing I-9s for all student wage employees, and faculty and staff employees whose first day of work does not coincide with new employee orientation.

### 3. FORM I-9, Section 1

#### **Purpose:**

The purpose of Section 1 of the I-9 form is for the employee to attest to the University, under penalty of law, that he/she is currently authorized to work in the United States. The attestation must be complete to be valid so it is critical that all required information be provided and that the employee sign Section 1. Since the completion of Section 1 is critical for enforcement purposes, the signature date must also be provided. Although the University does not provide Section 1 information, the University is responsible for ensuring that the Section 1 attestation is complete by close of business on the first day of the employee's services.

The Section 1 attestation provides the basis upon which the University proceeds to complete Section 2. Section 1 should be completed in full before Section 2 is completed.

**Note:** If corrections to Section 1 are necessary, the best practice is for the employee to provide the information and initial/date the corrections.

**Signature:**

Even if a preparer or translator assists an employee in completing Section 1 or the University serves as the preparer/translator, the employee himself or herself must sign or mark the form in the appropriate place in order to validate the Section 1 attestation.

The University is responsible for reviewing and ensuring that every employee fully and properly completes Section 1. An important Section 1 purpose is for the employee to inform the University that he/she is authorized to work, so that the University may proceed to review documentation of identity and employment authorization in Section 2. Attestation is invalid without the attesting party's signature.

**Social Security Number (SSN):**

An employee is not required to provide an SSN in Form I-9 Section 1, but may voluntarily provide it. An SSN provided on Form I-9 Section 1 should be the same number that appears on an SSN card presented as a List C document to satisfy Form I-9 Section 2 and as provided on other internal employment documents such as Form W-4 *Employee's Withholding Allowance Certificate*.

**Employee Attestation:**

The employee is required to attest, by checking the appropriate box, his or her citizenship or immigration status.

- A citizen must check Box 1.
- Non-citizen nationals of the U.S. (persons owing permanent allegiance to the U.S. including those born in American Samoa, including Swains Island) are required to check Box 2.
- A Permanent Resident of the U.S. must check Box 3 and indicate his/her Alien # (9 digit number found on the employee's Form I-551 (Permanent Resident card)).
- An alien authorized to work temporarily in the U.S. must check Box 4 and indicate his/her Alien # or Admissions # (11 digit number found on the Form I-94 -Arrival/Departure Record), and the expiration date of his/her work authorization (also found on the I-94).

#### 4. FORM I-9, Section 2

##### **Purpose:**

The purpose of Section 2 is to substantiate the employment eligibility of the employee who has completed Section 1 and to ensure that the University has reviewed employee documents in a timely manner. The employee must present documentation to the University that proves both current employment authorization and that he/she is the person to whom the authorization pertains (identity). The University is responsible for inserting the date of hire and for ensuring timeliness of Section 2 completion.

##### **Alternative documentation:**

The 3 *Lists of Acceptable Documents* found on page 5 of Form I-9 provide two alternative ways for an employee to

prove identity and work authorization. **The University must accept the employee's choice of documents (as long as they are acceptable).** The employee may choose to present a List A document that proves both identity and work authorization in a single document (or combination of documents) or a List B document proving his/her identity together with a List C document proving current work authorization. You must not accept both a List A document and a document from either List B or List C.

**Lists of Acceptable Documents:**

**(effective 4/3/09: all documents must be unexpired):**

**LIST A - Documents that Establish Both Identity and Employment Authorization:**

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

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.

### **LIST B - Documents that Establish Identity**

1. Driver's license or ID card issued by a state or outlying possession of the United States, if it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;
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;
3. School ID card with a photograph;
4. Voter's registration card;
5. U.S. military card or draft record;
6. Military dependent's ID card;
7. U.S. Coast Guard Merchant Mariner Card;
8. Native American tribal document; or
9. Driver's license issued by a Canadian government authority.

***For persons under age 18 who are unable to present a document listed above:***

10. School record or report card;
11. Clinic, doctor or hospital record; or
12. Day-care or nursery school record.

## **LIST C - Documents that Establish Employment**

### **Authorization:**

1. Unrestricted U.S. Social Security card;  
**NOTE: A copy (such as a metal or plastic reproduction) is not acceptable, nor is a laminated card if marked “not valid if laminated.”**
2. Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545);
3. Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350);
4. Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal;
5. Native American tribal document;
6. U.S. Citizen Identification Card (Form I-197);
7. Identification Card for Use of Resident Citizen in the United States (Form I-179); or
8. Employment authorization document issued by the Department of Homeland Security (other than those under List A).

### **Unexpired Documents Only:**

A major change (as of April 3, 2009) in the I-9 rules is that an expired document is no longer acceptable under List A, List B, or List C. Expired documents are different from documents that have no expiration date and are treated for I-9 purposes as unexpired (e.g., social security card). The fact that a document does not have an expiration date, however, does not necessarily mean that it is valid.

A document without an expiration date must clearly relate to the employee who presented it (via photo and/or physical description). The 1989 “white” version of the Form I-551 Permanent Resident card, for example, does not expire and is acceptable as unexpired as long as the employee who presents the document can be recognized as the person whose photo appears on the document.

Likewise, List B and C documents should be clearly linked. For example, the name appearing on the List C document should be the name that appears on the List B document and the photo and/or descriptive information that appear on the List B document should clearly identify the employee who presented it.

**“Original” Documents Only:**

The employee must present original documents that establish identity and employment authorization and that appear genuine on their face. The use of the term “original” in this context distinguishes an acceptable document from a photocopy. “Original” does not mean that a document must be the first one of its kind ever issued to the employee in order to be acceptable – if a document has been lost, stolen, or destroyed and replaced by the issuing authority, for example, that document is acceptable. No receipt is ever acceptable in situations where short-term employment lasts for 3 business days or less. For this purpose, a “business day” is a day on which the employee performs services for the University.

**Identical List B and C Documents:**

Some documents establish both identity and work authorization but appear on List B and/or C rather than on List A. In such cases, either Congress designated the document as an identity or employment authorization document or the document fails to meet List A standards as set forth in federal law (see IIRAIRA).

One of the three documents acceptable to establish both identity and current work authorization is the Native American tribal document, which appears under both List B and List C. The other two documents, Form I-197 and Form I-179, appear only on List C but qualify under List B #2 as ID cards issued by the Federal Government. When an employee presents any of these three documents, the document satisfies both identity and employment authorization standards and must be separately indicated by the University in Section 2 under both List B and List C.

### **Conflict between Section 1 Information and Section 2**

#### **Document:**

If faced with this situation, you should first ensure that the employee understood and properly completed the Section 1 attestation. If the employee made a mistake and corrects the attestation, he or she should initial and date the correction, or complete a new Form I-9. If the employee confirms the accuracy of his or her initial attestation, the University should not accept documents that conflict with the Section 1 attestation such as a “green card” from a U.S. citizen or a U.S. passport from an alien. Although you are not expected to be an immigration law expert, both documents in question are inconsistent with the status attested to and are, therefore, not

documents that reasonably relate to the person presenting them.

**“Receipt Rule:”**

Under limited circumstances, a receipt that substantiates application for a *replacement* document is acceptable. A receipt for first time application for a document, or for extension or renewal of an expired or expiring document, is never acceptable. The term “replacement,” as used in the I-9 rules, refers to a document that has been lost, stolen or destroyed during its period of validity and is being *replaced* to provide the employment authorization that the lost, stolen, or destroyed document would have provided.

The following documents are treated as “receipts” for the documents to which they relate:

- A Form I-94 or Form I-94A containing a temporary I-551 stamp and a photograph of the individual is considered a receipt for the Permanent Resident Card (Form I-551). The individual must present Form I-551 by the expiration date of the temporary I-551 stamp or within one year from the date of issuance of Form I-94 or I-94A if the I-551 stamp does not contain an expiration date.
- A Form I-94 or I-94A containing an unexpired refugee admission stamp is considered a receipt for either an Employment Authorization Document (Form I-766) or a combination of an unrestricted Social Security card and List B document. The employee must present acceptable documentation to complete Form I-9 within 90 days after the date of hire or, in the case of re-verification, the date employment authorization expires.

### **Recording Receipts on I-9, Section 2:**

When the employee provides an acceptable receipt, the University should record the document title in Section 2 of the Form I-9 and write the word “receipt” and its document number in the “Document #” space. When the employee presents the actual document, the employer must cross out the word “receipt” and any accompanying document number, insert the number from the actual document presented, and initial and date the change.

### **Certification (Date of Hire):**

The certification block in Section 2 is important and is the date from which the timeliness of Section 1 completion and Section 2 completion is determined. The “date of hire,” as explained above, is the date on which the employee’s services actually commenced rather than the date that an employee-employer relationship is established. Obviously, this date should be consistent with the University’s other internal records (such as payment and tax records).

### **Social Security Cards:**

A Social Security card is acceptable as a List C document as long as it is unrestricted and appears to belong to the employee who presented it. It is important to note that Social Security cards endorsed “NOT VALID FOR EMPLOYMENT” are not acceptable List C documents even if the cardholder is actually authorized to work. (An employee who has such a restricted card but is authorized to work should be able to present other List A or C documentation.)

## 5. FORM I-9, Section 3

### **Re-verification:**

Certain List C documents require re-verification and others do not. (**Note:** List B documents never need re-verification because identity is presumed not to change once it is established).

Lawful permanent resident (LPR) status does not expire even if the document used to substantiate unrestricted, indefinite employment authorization does (requiring the holder to replace the document upon expiration with a new document containing updated features). Proof of LPR status requires re-verification only when a Form I-94 endorsed with temporary proof of permanent residence (I-551 stamp) expires or, if no expiration date appears, within one year from the date of issuance.

### **Temporary Work Authorization:**

Proof of temporary or restricted work authorization requires re-verification when the temporary period expires or the basis of work authorization terminates and is known to the University. For example, a Form I-766 (EAD card) must be re-verified upon expiration of either the issuance period or upon termination of the basis on which the card was granted. The following are examples of such situations:

- If an EAD is issued based on pending adjustment, the EAD expires upon denial of adjustment even if the card has not expired;

- If an EAD is issued to a student based on unforeseen hardship, it remains valid only as long as the student maintains F-1 status;
- If an H-1b alien changes jobs, even for the same employer, and the new job is not covered by the approved petition, or if an employment-specific alien subject to temporary labor certification is transferred to a new location not covered in the original labor certification, the nonimmigrant employee's work authorization must be re-verified with an I-94 issued with approval of the change in employment.

### **Section 3 or New I-9:**

You may re-verify expiring documents by using Section 3 of the employee's current Form I-9, or by using a new Form I-9. If a new Form I-9 is used, the University writes the employee's name in Section 1, completes Section 3, and retains the new Form I-9 with the original:

### **Special Re-verification Situations:**

If an employee is authorized to work for the employer responsible for the Form I-9 and has filed an application for an extension of stay (typically requested within the employer's petition for extension of approval to employ the employee under the same classification), he/she may continue employment with the same employer for up to 240 days from the date the authorized period of stay expires. If an employee has timely filed for new employment authorization and USCIS fails to adjudicate that application within 90 days, the employee

will be granted an employment authorization document for a period up to 240 days.

### **Rehire and Re-verification Procedure:**

As an alternative to completing Sections 1 and 2 of a new Form I-9, re-verification and/or updating on an existing Form I-9 is possible if the employee is rehired within the retention period required for the form (one year after termination or three years from date of hire).

- When to re-verify: Re-verify using Section 3 of the existing Form I-9 if the employee's previous employment authorization (as indicated in Section 1 and/or listed in Section 2) has expired.
- How to re-verify: Record the date of rehire; Record the document title, number and expiration date (if any) of the document(s) the employee presents; Sign and date Section 3.
- When to update: Update using Section 3 of the existing Form I-9 if the employee's work authorization (as indicated in Section 1 and/or listed in Section 2) is unexpired and he/she remains eligible to work on the same basis as when the Form I-9 was completed.
- How to update: Record the date of rehire and the employee's new name, if applicable; Sign and date Section 3.

(Note: The University must complete a new Form I-9 if the version of the form used for the previous verification has since been replaced by a newer version).

## **6. Disposition of Completed Form I-9 and Copying of Supporting Documentation:**

Once the I-9 is complete, the original should be forwarded to UHR-CIS. Departments may also fax originals to CIS (924-3194). Departments should not make or retain copies of the original I-9. CIS is charged with the responsibility for maintaining original I-9s on file, and for purging those I-9s that are no longer required to be maintained.

Also, regulations allow but do not require that the University make copies of supporting documents provided by employees. Further, regulations mandate that if the University opts to retain copies of employee documentation, it must do so for all employees, regardless of national origin or citizenship status, or risk violation of anti-discrimination laws. CIS strongly urges departments to NOT make copies of supporting documentation, to NOT forward copies to CIS, and NOT maintain copies in department files.

#### **7. Remote (Offsite) Employment Verification:**

When hiring a person in a remote location where UVa employees or hiring officials are not physically present, there are procedures in place for allowing an authorized agent (e.g., licensed notary public) to conduct the I-9 documentation examination. In such cases, the authorized agent should follow exactly the same procedure for completing the I-9 as would a UVa hiring department.

Agents should complete Section 2 of the Form I-9 after examining documents presented by the employee and fax the completed form to the hiring department. The hiring department must enter the date of hire in Section 2 of the form. Please note that it is not acceptable for a notary public to

view employment authorization and identity documents, but leave Section 2 for the hiring department to complete. The person who views an employee's employment authorization documents should also complete and sign Section 2 on the hiring department's behalf, but the University remains liable for violations of employer sanctions laws.

For detailed instructions, please see the CIS web page:  
<http://www.hrs.virginia.edu/cis/offsitei-9instructions.html> .

## **8. Prohibited Discrimination:**

**Document Abuse:** Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship status during the I-9 process. There are four types of conduct deemed to discriminate against employment-authorized individuals in the initial authorization and re-verification processes. Such conduct includes:

### **Improperly**

- requesting that an employee produce more documents than are required by Form I-9 to establish the employee's identity and employment authorization;
- requesting that an employee present a particular document, such as a "green card" to establish identity and/or employment authorization;
- rejecting documents that reasonably appear to be genuine and belong to the employee presenting them; and
- treating groups of applicants differently when completing Form I-9, such as requiring certain groups of employees who look or sound "foreign" to produce particular documents the employer does not require other employees to produce.

**Note:** Although an employee may present his/her choice of identity and work authorization documents, the University should not ignore inconsistencies between the documents presented and the employee and/or other information in the University's records (including the Form I-9 itself). For example, although it is possible for an employee who attests to temporary work authorization to have an unrestricted Social Security card in some cases (e.g., refugees or asylees), the general rule is that even aliens who are authorized to work for a temporary period are not eligible for unrestricted Social Security cards. Likewise, an SSN or Alien# used for one purpose should be consistent with the same number as used for other purposes relating to the employment.

**Preference for U.S. Citizens:**

On an individual basis, the University may legally prefer a U.S. citizen to an equally qualified alien to fill a specific position, but may not adopt a blanket policy of always preferring citizens to noncitizens. U.S. citizenship may be required for some positions under certain federal or state law.