



# GMS Flash Alert

## Immigration Edition

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# United States - USCIS Publishes New Form I-9 Handbook for Employers

On April 27, 2020, United States Citizenship & Immigration Services (USCIS) released a new edition of its *Handbook for Employers: Guidance for Completing Form I-9 (M-274)*, providing several updates and clarifications from its previous edition.<sup>1</sup>

The new Handbook provides guidance on how an individual can serve as an authorized representative to complete the Form I-9 on behalf of an employer, which is especially important in remote work environments. Also included in this edition is updated guidance on how to complete Form I-9 in certain unique situations, including for foreign workers with an automatic extension of an employment authorization document (EAD), and F-1 international students changing status to H-1B visa classification.

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## WHY THIS MATTERS

All U.S. employers must complete Form I-9, *Employment Eligibility Verification*, requirements to verify the identity and employment authorization of their U.S. workforce including both U.S. citizen and non-citizen workers.

The *Handbook for Employers: Guidance for Completing Form I-9 (M-274)*, provides key instructions and guidance for U.S. employers in completing the Form I-9. Failure to properly complete the Form I-9 and comply with the forms requirements can result in monetary fines imposed on the employer, disbarment from government contracts, and, in certain situations, criminal penalties.<sup>2</sup>

Several sections of the new Handbook reflect major guidance changes that employers should familiarize themselves with to ensure continued Form I-9 compliance.

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## Notable Changes and Clarifications

The following notable updates have been included in the new Handbook.<sup>3</sup>

### Re-verifying Employees with Automatic EAD Extension

USCIS may grant an automatic EAD extension of up to 180 days to certain foreign nationals who have timely filed an application for renewal of their work authorization. Foreign nationals with Temporary Protected Status (TPS) may also receive an automatic EAD extension along with an extension of their country's TPS designation. The newly released Handbook provides updated guidance for employers conducting Form I-9 employment authorization re-verification of these foreign nationals. When the employee's EAD has been automatically extended, employers should update the additional information field in section 2 by entering "EAD EXT" and the 180-day auto-extended date in the format: "EAD EXT mm/dd/yyyy."

Previous Form I-9 instructions called for employees to cross out the old expiration date and enter the new date in the "alien authorized until" field of section 1. This directive has been removed to promote greater form legibility during Form I-9 inspections.

### I-9 Completion Guidance for Cap-Gap Eligible F-1 Students

The new Handbook revises documentation requirements for F-1 international students who have timely filed H-1B change of status petitions and who are benefiting from an automatic extension of their optional practical training (OPT) EAD pursuant to "cap-gap." (The "cap-gap" regulations provide a way of filling the "gap" between the end of F-1 status and the beginning of H-1B status that might otherwise occur if F-1 status is not extended for qualifying students.) The Handbook instructs employers completing a Form I-9 to record the student's expired F-1 OPT EAD and the Form I-797 receipt notice for an H-1B cap petition submitted on the F-1 student's behalf. Employers must enter the I-797 receipt number as a document number in section 2 of Form I-9. Notably, Form I-20 will no longer be required documentation in these cases.

As an F-1 student's OPT EAD automatic extension ("cap-gap") expires on October 1 of the calendar year, employers should be mindful of the requirement to re-verify employment eligibility with evidence of the approved H-1B Change of Status petition by September 30.

### Use of Authorized Representative for I-9 Completion

The new Handbook updates its section on who may complete Form I-9 to better align with the instructions in the most recent edition of the Form I-9 (Rev. 10/21/2019). For prior coverage of the new Form I-9, see GMS [Flash Alert 2020-23](#) (February 4, 2020). As of May 1, 2020, all U.S. employers should be using the new edition of the Form I-9 (Rev. 10/21/2019).

The Handbook provides that an employer "may designate, hire, or contract with any person ... to complete, update or make corrections to Section 2 or 3 on [the employer's] behalf." In other words, an employer is permitted to designate any third party, including the employee's family or household members, as an authorized representative to carry out the physical inspection requirements of an employee's documents to complete Form I-9 – a timely procedural update given the remote working conditions caused by the COVID-19 pandemic. For prior coverage see GMS [Flash Alert 2020-80](#) (March 19, 2020).

Regardless of who is designated by an employer to complete and sign the Form I-9, the employer continues to remain ultimately liable for any violations relating to the form's completeness and document verification process, even if the violations were committed by the designated person acting on the employer's behalf.

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## KPMG NOTE

KPMG Law LLP advises employers to familiarize themselves with the new Handbook and to contact our office should any questions arise.

We will endeavor to keep readers of GMS Flash Alert informed of any new developments as and when they occur.

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## FOOTNOTES:

- 1 The new Handbook can be downloaded from the USCIS I-9 Central [website](#).
- 2 For more information on the current civil fine amounts please [click here](#).
- 3 The Handbook includes a summary of changes that can be found [here](#).

## Contact us

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