

I-9 AUDIT CHECKLIST

Section 1

1. Does name match the name in the personnel files and on the INS documents?

2. Is the address, DOB and Social Security Filled out completely? _____
3. If the employee has no social security number yet, is the box marked “None” – ie no Tax I.D. number or internal temporary number allowed.

4. Is the attestation with the three boxes to check filled out completely by the employee? _____

Did the employee sign and date?

5. Is the Preparer/Translator’s Certification filled out and signed if someone assisted the employee in filling out Section I? _____

Section 2

6. Has the employer examined one document from List A OR one document from List B AND one document from List C?
It is superfluous to examine one from List A and one from List B or C, since List A alone is sufficient. It is likewise incorrect to examine only one document from List B or C. However, the document MUST BE a true List A, B or C document and you cannot say “SEE ATTACHED COPY”.

7. If the List C document presented was a Social Security Card, did it contain either the Notation: “NOT VALID FOR EMPLOYMENT” or “VALID ONLY WITH INS AUTHORIZATION”, it is NOT a valid List C document. If it says “NOT VALID FOR EMPLOYMENT” it is completely unacceptable. If it says “VALID ONLY WITH INS AUTHORIZATION” then the person responsible for I-9 verification can ask for another INS-issued employment authorization document such as the I-797 H1B approval notice – without committing document abuse.

8. If a List A document was presented, have all of the relevant spaces been filled.
Note: the most common List A document for aliens authorized to work is to present an unexpired foreign passport with an I-94. There are two spaces under List A – one for the passport info and one for the I-94 information. **Both must be filled in.** Also, the H1B and L-1 statuses are employer-specific. It is NOT sufficient to accept an I-94 stamped H1B or L1B unless you know that the sponsor of that status was XXXXXXXXXXXX except in the case of H1B portability (See Below). _____
9. Is the Employer Certification filled out completely and signed, including name, title and company name & date? _____

Section 3

10. Was the I-9 reverified on or before the date the work authorization expired?

Note: The “90-day rule” for acceptance of receipts in lieu of missing, lost or expired documents only applies to individuals who are already work-authorized, though the Handbook is not clear about this. Thus an alien who is applying for his or her initial INS Employment Authorization Document (EAD), would not come within the 90-day rule, while an alien applying for a replacement EAD would come within the rule. Likewise, an alien applying for extension of H1B or L1B status would come under the rule, while an alien applying for initial H1B or L1B status would not, except in the case of H1B portability.

Note: Although it is counterintuitive, the employer may not require the employee to produce any specific INS-issued document when reverifying employment eligibility, just as at the time of original hire. So if initially the employee presented a List A document, at reverification he can present one from B and one from C and the employer must accept them if they are valid documents (See #7 above).

11. Has the final attestation been signed and dated?

12. Was the I-9 completed within 3 days of hire?

*H1B Portability

The INS Handbook does not address the issue of I-9 verification in the case of H1B portability. This is because the law was only recently passed in 2001. This provision applies to employees who currently hold H1B status through a previous employer and are joining XXXXXXXX **after** XXXXXXXXXXXX has filed a new H1B petition, but **before** that

petition is approved by the INS. In this instance, acceptable I-9 documentation includes: List A - an unexpired foreign passport with the I-94 from the previous employer AND a copy of the INS receipt or Fed X Tracking slip for the new H1B filing by XXXXXXXX. A notation should be made in the margin that this employee is joining pursuant to H1B portability. Once the petition is approved, Section 3 should be filled out.

**Mergers and Acquisitions

In the case where XXXXXXXXXXXX acquires another company, XXXXXXXXXXXX does not have to fill out new I-9's for the acquired entity's employees; however XXXXXXXXXXXX becomes responsible for all the I-9's and may want to consider an audit.

**Consistency

Whatever procedures are adopted with regard to keeping document copies and attaching them to the I-9 or using Section 3 to re-verify vs. filling out a new I-9 should be consistent throughout the company. You should not attach documents in some cases, and not in others, or use Section 3 in some cases and not in others. The only exception to this would be if you decide to use Section 3, but some I-9's have been re-verified so many times that they become illegible.