



I-9 AUDIT GUIDE

Alka Bahal, Esq.

Partner & Co-Chair, Corporate Immigration Practice

Direct: 973.994.7800

Fax: 973.992.1653

immigration@foxrothschild.com



Fox Rothschild LLP
ATTORNEYS AT LAW

www.foxrothschild.com

- **Table of Contents**
- **Introduction**
- **Step 1: Confirm Existence of Forms Employer Is Required To Have on File**
- **Step 2: Confirm Data on Each Form Is Properly Filled Out**
- **Step 3: Confirm Supporting Documents Are Attached to the Form**
- **Step 4: Make Corrections***
- **Form I-9**

Table of Contents

Introduction	2
Step 1: Confirm Existence of Forms Employer Is Required To Have on File	3
Step 2: Confirm Data on Each Form Is Properly Filled Out	4
Step 3: Confirm Supporting Documents Are Attached to the Form	5
Step 4: Make Corrections*	5
Form I-9	7

- Table of Contents
- Introduction
- Step 1: Confirm Existence of Forms Employer Is Required To Have on File
- Step 2: Confirm Data on Each Form Is Properly Filled Out
- Step 3: Confirm Supporting Documents Are Attached to the Form
- Step 4: Make Corrections*
- Form I-9

Introduction

This document is designed to be an employer's guide for an internal private I-9 audit to be used in conjunction with the advice of corporate immigration counsel.

This document alone is not a comprehensive list of possible I-9 related issues.



Step 1: Confirm Existence of Forms Employer Is Required To Have on File

- Confirm there is a Form I-9 on file for every person currently employed (who was hired on or after November 7, 1986). You do not need to have an I-9 for employees who were hired prior to November 7, 1986, and have been continuously employed since that time.
- Confirm there is a Form I-9 on file for certain terminated employees.
 - Terminated employees hired within the last three years, regardless as to when terminated.
 - Terminated employees hired at any time, if terminated in the last year.
- Confirm the Form I-9 was completed using the correct version (for the time).
 - When the I-9 dated 11/21/91 was released, it replaced all earlier editions.
 - Confirm the Form I-9 on file for all employees hired after November 22, 1991, and before April 3, 2009, is the version dated 11/21/91 or later.
 - Confirm the Form I-9 on file for all employees hired on or after April 3, 2009, and before May 7, 2013, is the version dated 02/02/09 or later.
 - When the I-9 dated May 7, 2013, was released, it replaced all earlier editions.
 - All **new** individuals hired or **reverified** on or after May 7, 2013, and before January 22, 2017, should have the version dated 03/08/13.
 - When the I-9 dated November 14, 2016, was released, it replaced all earlier editions.
 - All **new** individuals hired or **reverified** on or after January 22, 2017, should have the current/new version of the Form I-9 on file (11/14/16 N in lower left).
 - When the I-9 dated July 17, 2017 was released, it replaced all earlier editions.
 - All new individuals hired or re-verified on or after September 18, 2017 should have the current/new version of the Form I-9, on file (07/17/17 N in lower left).
 - The I-9 dated "10/21/2019" becomes mandatory for all new hires on 04/30/2020, and replaces all earlier editions.
 - All new individuals hired or re-verified on or after April 30, 2020 should have the current/new version of the Form I-9, on file (10/21/2019 in lower left).

- Table of Contents
- Introduction
- Step 1: Confirm Existence of Forms Employer Is Required To Have on File
- Step 2: Confirm Data on Each Form Is Properly Filled Out
- Step 3: Confirm Supporting Documents Are Attached to the Form
- Step 4: Make Corrections*
- Form I-9

Step 2: Confirm Data on Each Form Is Properly Filled Out

- A. **Section 1:** Check that the **employee** has filled in all information.
1. Common issues to watch for:
 - a) Missing employee's name.
 - b) Missing check mark indicating whether the employee attests to being a United States citizen, noncitizen national, lawful permanent resident or alien authorized to work.
 - c) Missing a number/Alien Registration/USCIS Number (where the box for lawful permanent resident has been checked).
 - d) Missing expiration date or a number/Alien Registration/USCIS Number/I-94 Admission Number (where the box for alien authorized to work until has been checked).
 - e) Missing employee signature and/or date.
 - f) Missing employee: maiden name, address or birth date.
 - g) Employee attestation not completed within first day of hire/employment.
 - h) Employee information in preparer and/or translator section.
 - i) Missing preparer and/or translator name, address or signature.
 - j) Missing date in the preparer and/or translator certification box.
- B. **Section 2:** Check that the **employer** has filled in information correctly/accepted proper documents.
1. Common issues to watch for:
 - a) Improper List A, B or C documents reviewed or verified (wrong/not on list/in wrong column).
 - b) Too many documents (i.e., a List A and List C document).
 - c) Information about documents incomplete or missing: complete title, full issuing authority, document number and expiration date.
 - d) List A or List C document expired when accepted.
 - e) Missing date of hire/first date of employment.
 - f) Missing full business name or complete address.
 - g) Missing employer representative's full printed name and/or title.
 - h) Missing employer representative's attestation (full) signature and/or date.
 - i) Employer representative's attestation not completed within three business days of hire/employment.
- C. **Section 3:** Check that the employer has filled in information correctly/accepted proper documents.
1. Common issues to watch for:
 - a) Improper List A, B or C documents reviewed or verified.
 - b) Missing document title, identification number or expiration date.
 - c) Missing date of rehire.
 - d) Missing signature and/or date.
 - e) Section 3 is dated after the date that work authorization expired.
 - f) Previous document expired prior to validity of new authorization.

- Table of Contents
- Introduction
- Step 1: Confirm Existence of Forms Employer Is Required To Have on File
- Step 2: Confirm Data on Each Form Is Properly Filled Out
- Step 3: Confirm Supporting Documents Are Attached to the Form
- Step 4: Make Corrections*
- Form I-9

D. General Issues

1. Common issues to watch for:
 - a) “White-out” should never be used.
 - b) Information should not be obliterated.
 - c) Original forms should not be replaced with “new original” forms unless attached to old incomplete or incorrect forms.



Step 3: Confirm Supporting Documents Are Attached to the Form

- A. Check that the documents as *listed* under List A, OR B and C are attached to the form (this practice must be applied uniformly to all employees).
 1. There should be no more/no less.
 2. If Section 3 was used for an update or reverification, then the documents from Section 2 AND Section 3 should be attached.

Step 4: Make Corrections*

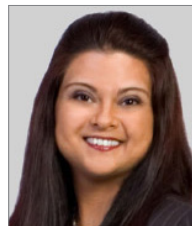
- A. Corrections are permitted; however, obliterating previous incorrect information is not permitted.
- B. Corrections should be made **conspicuously** so as to avoid allegations of evidence tampering.
- C. Corrections should **ONLY** be made by lining out incorrect entries and/or inserting the correct information, annotating the initials of the individual making the correction and the date made.
- D. Who should make corrections:
 1. Employees (only) should make any necessary corrections in Section 1. These changes should be initialed and dated when made.
 2. Employer (any authorized representative) may make corrections in Sections 2 and 3. These changes should be initialed and dated when made.
 - a) Except that any certification as to observing an employee’s original documentation must be made by the individual who actually viewed the document(s).
 3. Excess information (or listing of documents) should be lined or “Xd” out to indicate “removal” from the form. Such changes should be initialed and dated when made.

- **Table of Contents**
- **Introduction**
- **Step 1: Confirm Existence of Forms Employer Is Required To Have on File**
- **Step 2: Confirm Data on Each Form Is Properly Filled Out**
- **Step 3: Confirm Supporting Documents Are Attached to the Form**
- **Step 4: Make Corrections***
- **Form I-9**

- E. Do not backdate or recreate any document.
 1. All changes should be indicated as of the date actually made.
- F. Readily available information (i.e., from a photocopy of a document attached to the I-9) may be used to update or correct the data on the form.
 1. If information is not readily available, the employer may have employee assist in correcting an existing form or fill out a new form (attach to the old one).
- G. Attaching a memo to the I-9 file indicating that the document was audited/reviewed and updated/corrected (or a new form created to supplement an original) is helpful. Alternatively, you may enter information into the “Additional Information” section on page two of the current edition of the form.
- H. Where corrections are not possible (i.e., employee is no longer employed/ unable to correct), attaching a memo to the I-9 file indicating that the error was identified but steps could not be taken to correct is helpful (or use the “Additional Information” area on page two of the current edition of the form).

**We suggest you seek legal advice from an experienced attorney before altering original I-9 forms or taking other corrective actions.*

For more information, please contact:



Alka Bahal, Esq.

Partner & Co-Chair

Corporate Immigration Practice

973.994.7800

abahal@foxrothschild.com

© 2020 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstance have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.



Form I-9 Supplement, Section 1 Preparer and/or Translator Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

**USCIS
Form I-9
Supplement**
OMB No. 1615-0047
Expires 10/31/2022

Employee Name:	Last Name (<i>Family Name</i>)	First Name (<i>Given Name</i>)	Middle Initial
-----------------------	----------------------------------	----------------------------------	----------------

Instructions: This supplement may be used if extra spaces are required to document more than one preparer and/or translator assisting an employee in completing Section 1 of Form I-9. The preparer and/or translator must enter the employee's name in the spaces provided. Each preparer or translator must complete, sign and date a separate certification area. Employers must retain completed supplement sheets with the employee's completed Form I-9.

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Date (<i>mm/dd/yyyy</i>)	
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)	
Address (<i>Street Number and Name</i>)	City or Town	State	ZIP Code

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Date (<i>mm/dd/yyyy</i>)	
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)	
Address (<i>Street Number and Name</i>)	City or Town	State	ZIP Code

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Date (<i>mm/dd/yyyy</i>)	
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)	
Address (<i>Street Number and Name</i>)	City or Town	State	ZIP Code

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Date (<i>mm/dd/yyyy</i>)	
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)	
Address (<i>Street Number and Name</i>)	City or Town	State	ZIP Code