



Completing Forms I-9 for Foreign Students and Highly Skilled Employees

September 2022



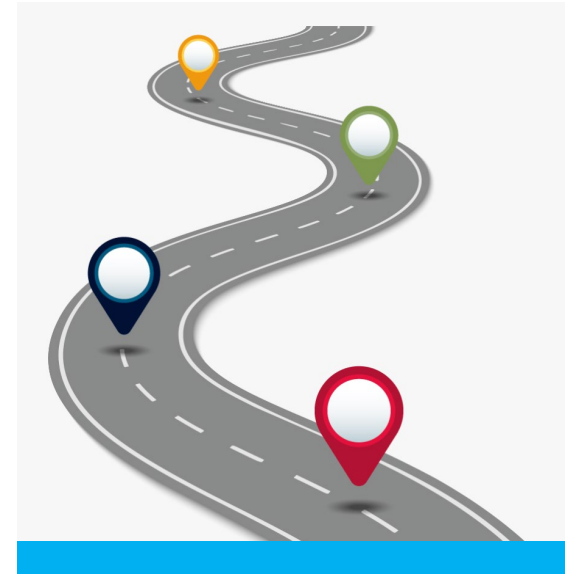
INTRODUCTIONS

- **John W. Mazzeo**, Associate General Counsel – Director of I-9 and E-Verify Compliance
- Focuses on supporting our Form I-9 and E-Verify operations division regarding compliance and best practices. John is available to all of our clients as a subject matter expert on issues involving Form I-9 and E-Verify.
- Former Assistant Chief Counsel with Immigration and Customs Enforcement where he served as the legal counsel for all worksite enforcement and Form I-9 investigations and sanctions in Pennsylvania, Delaware, and West Virginia.
- Holds a Juris Doctor from the Drexel University Thomas R. Kline School of Law, and an undergraduate degree from Ursinus College.
- Member of the Association of Corporate Counsel and the American Immigration Lawyers Association.



TODAY'S AGENDA

- Documenting employment authorization for students
- Documenting employment authorization for highly skilled workers
- Using employment authorization extensions to ensure a stable workforce
- E-Verify considerations
- Considerations for establishing a Form I-9 compliance program



This webinar is designed solely for informational purposes, and should not be inferred or understood as legal advice or binding case law, nor shared with any third parties. Persons in need of legal assistance should seek the advice of competent legal counsel.

FORM I-9 REMINDERS

- Section 1 of Form I-9 must be completed by the employee no later than close of business on the first day of work for pay.
 - Fields must be completed or marked “N/A”
 - Individuals in Alien Authorized to Work status must:
 - Complete the “alien authorized to work until” date;
 - Insert alien number, I-94 number, or foreign passport information.
- Section 2 must be completed by the employer or authorized representative no later than the third day of work.
- Reverifications must be completed no later than the expiration of current work authorization.

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

- Visa types typically used by students:
 - **F-1** – full-time student at an accredited college, university, seminary, academic high school, elementary school, or other academic institution or in a language training program that culminates in a degree, diploma, or certificate. Such schools must be authorized by the U.S. government to accept international students.
 - **J-1** – work and/or study based exchange visitor
 - **M-1** – students in vocational or other nonacademic programs, other than language training



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DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

On Campus Employment

- Can be physically on-campus providing a direct service for students on campus or an off-campus scenario where the work is educationally affiliated with the school.
- Form I-9 Requirements:
 - Section 1 Alien Authorized to Work Until date comes from the Form I-20 (program end date)
 - Section 2 document combination is the Foreign Passport and Form I-94
 - Reverification: Form I-94 and Form I-20



DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

Curricular Practical Training

- Alternative work/study, internship, cooperative education, or other type of required internship or practicum offered by sponsoring employers through a cooperative agreement with the school that is integral to the established curriculum.
- Form I-9 Requirements:
 - Section 1 Alien Authorized to Work Until date comes from the Form I-20 (CPT end date).
 - Section 2 document combination is the Foreign Passport, Form I-94, and Form I-20 *or* List B document paired with Form I-94 and Form I-20 (Form I-94 is recorded in the “Additional Information field of Section 2”).
 - Reverification: Combination Form I-94 and I-20.

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

Off-Campus Employment

- Severe economic hardship
 - Students who meet certain criteria can request work authorization from USCIS.
 - Acceptable document: EAD.
 - Reverification: EAD.
- Sponsored by an International Organization
 - Employment by a recognized international organization within the meaning of the International Organization Immunities Act.
 - Acceptable document: EAD.
 - Reverification: EAD.

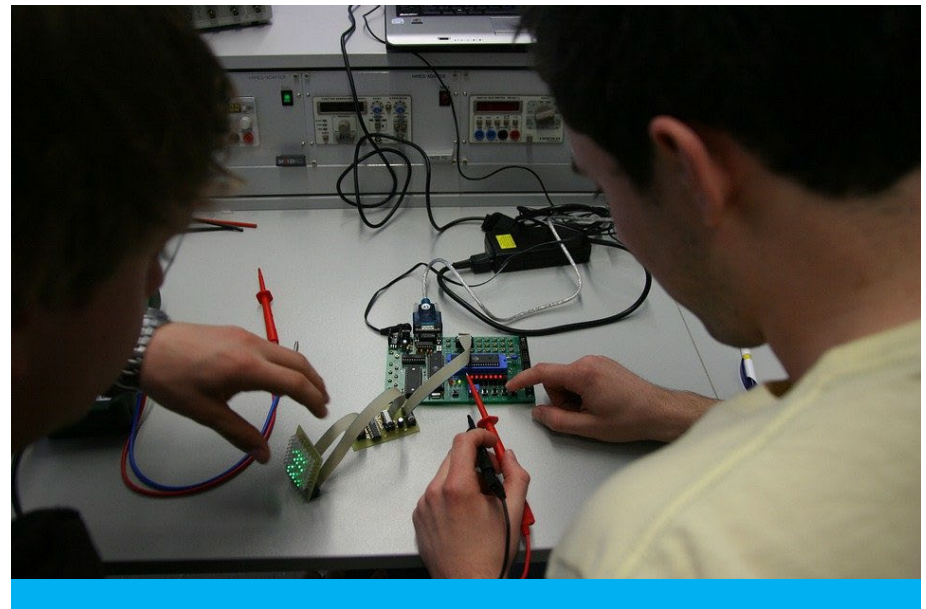


DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

- **Optional Practical Training** - practical training experience that directly relates to a student's major area of study.
 - **Pre-Completion OPT** – Prior to finishing educational requirements
 - **Post-Completion OPT** – After finishing educational requirements
 - **STEM OPT** – Individuals with bachelor's, master's, or doctoral degrees in specific STEM fields may obtain an additional 24 months of OPT
- **Form I-9 Requirements:**
 - Acceptable Document: EAD.
 - If seeking extension of OPT EAD while awaiting STEM OPT EAD, may proffer expiring/expired EAD with Form I-20 showing STEM OPT recommendation.
 - Reverification: EAD.

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

- A note on employer obligations when employing someone in **STEM OPT** status:
 - Must be in good standing with E-Verify;
 - Must comply with certain reporting requirements;
 - Must form a training plan for the individual.



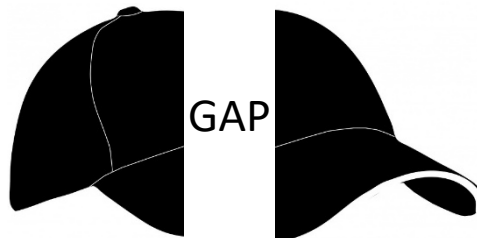
DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

- **CAP-GAP Extensions**

- Many times, a student's work authorization expires before the effective date of an H-1B visa, and this could result in a gap in authorized stay and employment authorization.
- In 2008, USCIS first published a rule that would allow an extension of stay.
- In 2016, the rule was finalized.

- **Form I-9 Requirements:**

- Expired/Expiring EAD with a Form I-797C showing that the Form I-129 was filed extends the STEM OPT status until 09/30
- Prior to 09/30, must reverify using the Form I-94 (attached to the bottom of the I-797A, Approval Notice).

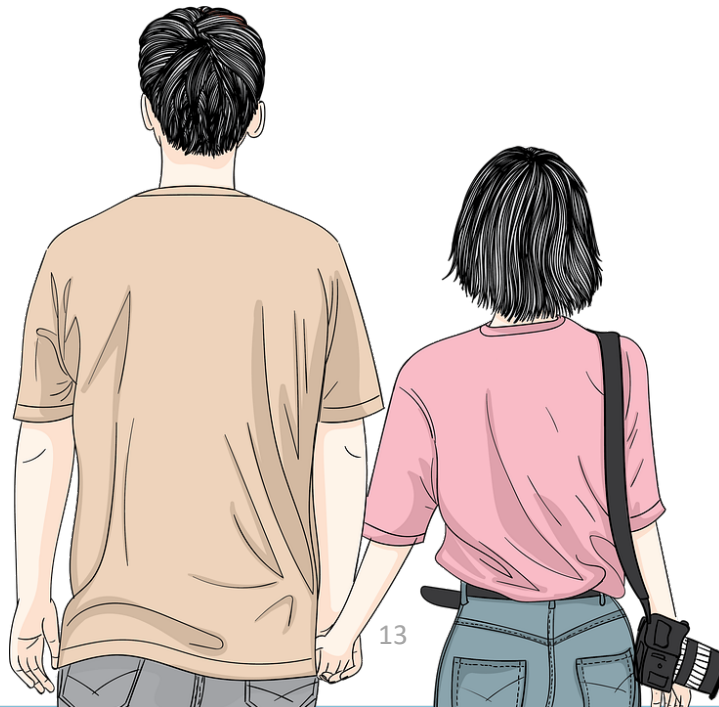


DOCUMENTING EMPLOYMENT AUTHORIZATION FOR STUDENTS

- **For J-1 Exchange Visitors:**
 - Acceptable Documents:
 - Section 1 Alien Authorized to Work Until date is found on the DS-2019
 - Section 2 document combinations:
 - Foreign Passport, Form I-94, and DS-2019
 - List B document and combination Form I-94 and DS-2019 (Form I-94 details go in the “Additional information” field of Section 2).
 - Reverification:
 - Combination Form I-94 and DS-2019

EMPLOYMENT AUTHORIZATION FOR SPOUSES AND CHILDREN

- Spouses and children of F-1 students are generally not authorized to work in the United States absent certain, narrow circumstances.
- Spouses and children of J-1 exchange visitors must apply for an EAD with USCIS before they may accept employment.



DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS

- Most common visas for highly skilled workers:
 - **J-1** – Exchange visitors;
 - **H-1B** – Specialty Occupations;
 - **H1B1** – Specialty Occupations from Singapore and Chile.
 - **O** – Individuals with Extraordinary Ability or Achievement;
 - **TN** – Mexican or Canadian Nationals in a NAFTA-listed occupation;
 - **E-3** – Specialty Occupation from Australia.

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS

- **For J-1 Exchange Visitors:**
 - Acceptable Documents:
 - Section 1 Alien Authorized to Work Until date is found on the DS-2019
 - Section 2 document combinations:
 - Foreign Passport, Form I-94, and DS-2019
 - List B document and combination Form I-94 and DS-2019 (Form I-94 details go in the “Additional information” field of Section 2).
 - Reverification:
 - Combination Form I-94 and DS-2019



DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS

- **H-1B Specialty Occupations**

- Foreign Passport and Form I-94 or List B and Form I-94 (List C No. 7).
- Switching employers:
 - Foreign Passport/Form I-94 or List B and Form I-94 *along with proof that Form I-129 was filed*
 - AC-21 [date of filing]
- Extension:
 - Foreign Passport/Form I-94 or List B and Form I-94 *along with proof that Form I-129 was timely filed*
 - 240-Day Ext.

- **Spouses**

- Must apply for an EAD
- Eligible for EAD extension (EAD+797C+I-94)

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS



- **O Visas**, for those with Extraordinary Ability
 - Foreign Passport and Form I-94 or List B and Form I-94 (List C No. 7).
 - Extension:
 - Foreign Passport/Form I-94 or List B and Form I-94 *along with proof that Form I-129 was timely filed*
 - 240-Day Ext.
- **Spouses**
 - May not work, but may study.

DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS

- **TN Visas**, Mexican or Canadian National coming to work in a USMCA-listed occupation
 - Foreign Passport and Form I-94 or List B and Form I-94 (List C No. 7).
 - Extension:
 - Foreign Passport/Form I-94 or List B and Form I-94 *along with proof that Form I-129 was timely filed*
 - 240-Day Ext.
- **Spouses**
 - May not work, but may study.



DOCUMENTING EMPLOYMENT AUTHORIZATION FOR HIGHLY SKILLED WORKERS

- **E-3 Visaholders**, Specialty Occupation Workers from Australia
 - Foreign Passport and Form I-94 or List B and Form I-94 (List C No. 7).
 - Extension:
 - Foreign Passport/Form I-94 or List B and Form I-94 *along with proof that Form I-129 was timely filed*
 - 240-Day Ext.
- **Family**
 - Spouse may work
 - List B and Form I-94 (List C No. 7) showing E3S status
 - May also apply for an EAD
 - Eligible for EAD extension (EAD+797C+I-94)
 - Children may not work

EMPLOYMENT AUTHORIZATION EXTENSIONS

- EAD extensions:
 - Even though the document may appear expired on its face, its validity may be extended through:
 - Timely filing of a renewal (or other) application; or
 - Designation in the Federal Register (TPS).
- Form I-94 Extensions
 - Certain individuals may use their Form I-94 as evidence of work authorization and the Form I-94's validity may be extended through certain timely filings.
- Form I-551 Extensions
 - A facially expired Form I-551's validity may be extended by timely Form I-90, I-751, or I-829 filings.

EMPLOYMENT AUTHORIZATION EXTENSIONS

- Extensions via timely renewal filing are generally for 540 days (until October 26, 2023)

EAD Category Code is:				AND the individual proffers:
A03	A05	A07	A08	A Form I-797C, Notice of Action showing that a renewal application was filed before the EAD's expiration date and in the same category code
A10	A12	C08	C09	
C10	C16	C19	C20	
C22	C24	C31		

- E, L, and H-1B dependent spouses may have their EAD extended either 540 days or until their Form I-94 expires, whichever is shorter.

EAD Category Code is:		AND the individual proffers:
A17	A18	A Form I-797C, Notice of Action showing that a renewal application was filed before the EAD's expiration date and in the same category code
C26		

EMPLOYMENT AUTHORIZATION EXTENSIONS

- EADs extended by publication in the Federal Register:
 - EADs showing category code **A12** or **C19** may be extended by publication in the Federal Register
 - Visit [USCIS](#) to determine if the individual's Form I-766 has been automatically extended (by selecting the country listed on the EAD and cross-referencing the printed expiration date).

EAD expiration date:	Now valid until:
Jan. 5, 2018	Dec. 31, 2022
July. 5, 2018	Dec. 31, 2022
Jan. 5, 2020	Dec. 31, 2022
Jan. 4, 2021	Dec. 31, 2022
Oct. 4, 2021	Dec. 31, 2022

EMPLOYMENT AUTHORIZATION EXTENSIONS

- The employment authorization for individuals who proffer a **Form I-94** when completing Form I-9 may be extended up to 240 days if an application is timely filed.

Class of Admission is:				AND the individual proffers:
A-3	CW01	E-1	E-2	Proof that a Form I-129 seeking an extension of stay was timely filed
E-3	G-5	H-1B	H-1B1	
H-2A	H-2B	H-3	I	
L-1	O-1	O-2	P-1	
P-2	P-3	R-1	TN	

EMPLOYMENT AUTHORIZATION EXTENSIONS

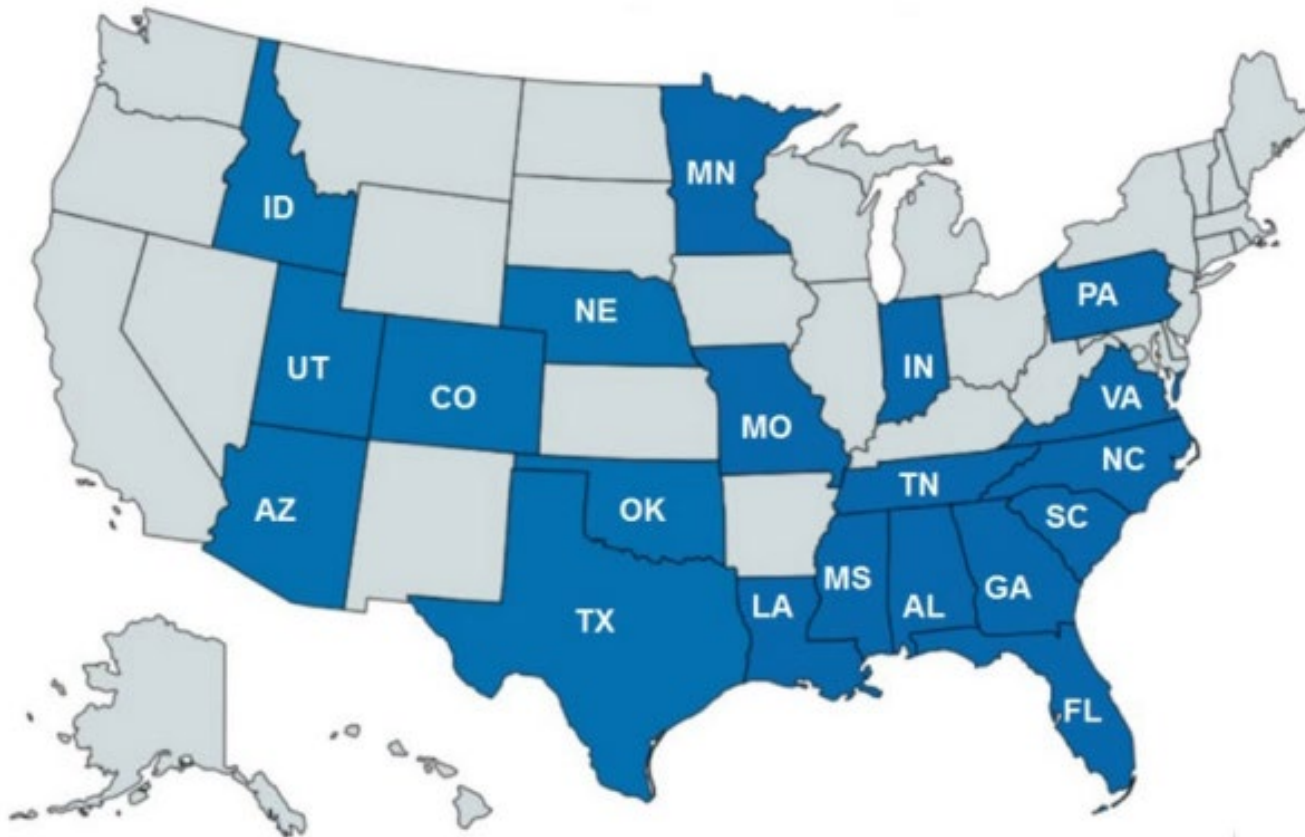
- **Form I-551** may be extended in three ways:
 - An expired Form I-551 and a Form I-797 showing **Form I-90** filing is valid for 24 additional months, remains a List A document, and does not need reverification.
 - An expired Form I-551 and Form I-797C showing **Form I-751** filing is valid for 24 additional months, but becomes a List C document (and a List B document must be used), and requires reverification.
 - An expired Form I-551 and Form I-797C showing **Form I-829** filing is valid for 24 additional months, but becomes a List C document (and a List B document must be used), and requires reverification.

E-VERIFY PARTICIPATION

- E-Verify is an electronic means for confirming work authorization.
 - Operated by USCIS using multiple sources of data.
 - Most cases return “Employment Authorized” within seconds.
- When is it mandatory?
 - Certain federal contracts that contain the FAR E-Verify clause;
 - State and local mandates;
 - STEM OPT employers must be a participant in good standing.



E-VERIFY PARTICIPATION



FORM I-9 COMPLIANCE PROGRAM CONSIDERATIONS

- Who will be the program owner/responsible party?
- Will the Form I-9 completion process (and subsequent retention) be centralized in one place or will each location have it's own program owner and retention system?
- Who will serve as the SME for Form I-9 questions?
- Relationships with internal or outside counsel.
- Who will conduct the annual audit?





QUESTIONS?

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