

## Form I-9 and Employment Eligibility Verification Policy

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### Contents:

§ 1.	Policy .....	1
§ 2.	Work Authorization .....	2
§ 2.1.	Form I-9, Employment Eligibility Verification .....	2
§ 2.2.	Physical Document Examination .....	2
§ 2.3.	Remote Verification of Form I-9 Documentation (Optional Alternative Procedure to Physical Document Examination) .....	3
§ 3.	E-Verify Program-Employment Authorization Confirmation .....	4
§ 4.	When to Verify Eligibility .....	5
§ 5.	Continuing Employment (Employees Not Considered “Newly Hired”) .....	6
§ 6.	Storage and Retention of Documentation .....	6
§ 6.1.	Storage of Documents .....	6
§ 6.2.	Retention of Documents .....	7
§ 7.	Re-verification .....	8
§ 8.	Sources of Authority .....	9
§ 9.	History of This Policy .....	9

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### § 1. Policy

The federal Immigration Reform and Control Act (IRCA) amended the Immigration and Nationality Act by making it unlawful to hire, recruit or refer for a fee any individual who is not authorized to accept employment in the United States. This law seeks to preserve jobs for those who are legally entitled to them, and states that the employer must hire only United States citizens or noncitizens<sup>1</sup> who are authorized to work in the United States. Additionally, under the State Human Resources Act, all North Carolina State agencies, departments, institutions, community colleges, and local education agencies shall verify, in accordance with the E-Verify Program, each individual’s legal status or authorization to work in the United States, after hiring the individual to work in the United States.<sup>2</sup>

Advisory Note: For the processes described in this policy, employers should ensure their procedures limit the possibility that sensitive employee information is transmitted to an unintended recipient or stored in an incorrect employee file. For that reason, agencies should institute procedures to require sequential, rather than concurrent, processing of these documents. This means that only one Form I-9 is verified at a time. All documents related to

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<sup>1</sup> The federal I-9 form, as updated 8/1/2023, replaces the term “alien” with the term “noncitizen.”

<sup>2</sup> N.C.G.S. § 126-7.1(i). The “Basic Pilot Program” described in this statute is now the E-Verify program.

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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the verification process must be closed or securely stored away before starting any new Form I-9 or E-Verify processes.

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### § 2. Work Authorization

#### § 2.1. Form I-9, Employment Eligibility Verification

To ensure compliance with its provisions, IRCA mandates that employers certify the employment eligibility of all new employees (including United States citizens) hired on or after November 7, 1986, by requiring completion of the employment eligibility verification form, Form I-9, within three days of employment.

Verification of employment eligibility is not required for persons hired on or before November 6, 1986 who have been continuously employed by the same North Carolina agency since that date. If a current State employee accepts a position in a different North Carolina state agency, their employment eligibility must be confirmed by the completion of a new Form I-9.

This procedure must be consistently followed with regard to every employee for whom verification of employment eligibility is required.

Employers should ensure they are using the correct version of the Form I-9.<sup>3</sup> The current version of the Form I-9 and corresponding instructions can be found on the United States Citizenship and Immigration Services (USCIS) website at <https://www.uscis.gov/i-9>.

#### § 2.2. Physical Document Examination

The default method of verifying an employee's Form I-9 documentation is physically examining the documents that an employee supplies, along with the Form I-9, to verify the identity and authorization of an employee to work in the United States.

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<sup>3</sup> Beginning November 1, 2023, only the new Form I-9 dated "08/01/2023" may be used. The version date can be found at the lower left corner of the form.

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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### § 2.3. Remote Verification of Form I-9 Documentation (Optional Alternative Procedure to Physical Document Examination)

If an employer is in good standing with E-Verify, it is qualified to remotely examine an employee's documentation using an alternative procedure authorized by the Department of Homeland Security (DHS) at any distinct E-Verify hiring site. If an employer chooses to offer the remote verification alternative procedure to new employees at an E-Verify hiring site:

- They must do so for all employees at that site, or
- They may choose to offer the alternative procedure for new hires who are field/home-based or full-time telework and continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity.

If an employer offers remote verification, employees are not obligated to participate in remote verification and may choose to present their documents for physical examination.

If an agency or E-Verify hiring site chooses to utilize this option to use remote verification, the agency or E-Verify hiring site must develop a remote verification procedure that includes, at minimum, the following steps:

1. The employee must complete Section 1 of Form I-9 no later than the first day of work for pay and transmit to the employer. **The Form I-9 must be submitted by the employee via a secure file transfer protocol (SFTP) client software, or other secure file share solution that has been approved by the Enterprise Security and Risk Management Office (ESRMO).** Each agency or university should consult with its agency Chief Information Officer (CIO), Chief Information Security Officer (CISO), or delegated authority to arrange a secure method for transmission of documents.
2. The employee must transmit front and back copies of documents to be examined remotely prior to the live video interaction. **Documents must be submitted by the employee via the secure file share solution identified above.**
3. An employer representative must examine copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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- documentation presented reasonably appears to be genuine and relates to the employee.
4. The employer representative must conduct a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and relates to the individual. The employee must present the same document(s) during the live video interaction that were submitted to the agency prior to the video interaction. The employer representative must complete Section 2 of the Form I-9. This step must occur within three business days of the first day of work for pay<sup>4</sup>; and
  5. The agency must retain a clear and legible copy of the documentation (front and back if the documentation is two-sided) for as long as the employee works for the agency, plus the specified period after their employment has ended. Refer to Section 6.2 of this policy for retention requirements.

You can find additional information about remote examination of documents at <https://www.uscis.gov/i-9-central/remote-examination-of-documents>.

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### § 3. E-Verify Program-Employment Authorization Confirmation

In addition to the I-9 process, electronic verification using the internet-based E-Verify Program is required for every newly hired employee who began work in an agency/university on or after January 1, 2007, except in the case of Local Education Agencies (LEAs). Verification by the E-Verify Program is required for all LEA employees who were newly hired on or after March 1, 2007. This program is only to be used to determine the employment eligibility of newly hired employees. Attempting to verify the employment eligibility status of a person who was employed by the State before January 1, 2007 is strictly prohibited. Verification of an employee's eligibility to work in the United States through the E-Verify system should be completed after the Form I-9 and

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<sup>4</sup> This means if your employee began work for pay on Monday, you must complete Section 2 by Thursday of that week.

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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associated documents have been received and examined, but within three business days of the employee's first day of work for pay.

After a case is submitted in E-Verify, the agency representative will receive an immediate result of either Employment Authorized, Tentative Non-Confirmation, or Verification in Process. Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because of a "Verification in Process" or "Tentative Non-Confirmation" result. Please refer to the E-Verify website ([www.e-verify.gov](http://www.e-verify.gov)) or the E-Verify User Manual (available at [www.e-verify.gov/e-verify-user-manual](http://www.e-verify.gov/e-verify-user-manual)) for detailed information on steps the employer must take when a "Verification in Process" or "Tentative Non-Confirmation" result is received.

A designated representative from each State agency, department, institution, community college, and local education agency is required to agree to and sign the Department of Homeland Security's Memorandum of Understanding in order to begin using the E-Verify Program.

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### § 4. When to Verify Eligibility

An agency may not request documentation that a person is eligible to work in the United States until an offer of employment is made and accepted by the candidate. For that reason, an employing agency or university must secure proper administrative approvals and must complete all pre-employment screening before an offer of employment is made. In certain cases, the offer of employment may be conditional, but the conditions of the pending offer must be clearly stated to the candidate, and must be otherwise legally valid. Only after that offer of employment is made may the agency or university request documents for the completion of the Form I-9 and the verification.

For a United States citizen or permanent resident, if documentation is unavailable at the time of initial employment, and the employee has applied for that documentation, a receipt for that application is required, within the first three days of employment, for completion of the Form I-9. The employee must produce the original document within ninety days of hire. The E-Verify verification may be delayed until the employee submits the original documents.

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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Failure to complete the Form I-9 or to provide documentation within three business days will result in the employee's separation from State employment.

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### § 5. Continuing Employment (Employees Not Considered "Newly Hired")

Employers must complete a new Form I-9 when a "hire"<sup>5</sup> takes place. A "hire" has not taken place if the individual is continuing in their employment and has a reasonable expectation of employment at all times.

A "hire" **does not include**:

- an employee returning from a paid or unpaid leave approved by the employer;
- an employee who has been promoted, demoted, reassigned, or received a horizontal transfer, but has not changed agencies/universities;
- an employee returning from a reduction-in-force if returning to the same agency/university;
- an employee returning after a wrongful discharge; or
- an employee engaged in seasonal employment that has a reasonable expectation to return to work in the same capacity.

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### § 6. Storage and Retention of Documentation

#### § 6.1. Storage of Documents

Employers may use a paper system, an electronic system, or a combination of paper and electronic systems to store Form I-9 and associated documents. Paper copies of the documents presented by employees may be stored with the employee's Form I-9 or with the employees' records. However, USCIS recommends that employers keep Form I-9 separate from personnel records to facilitate an inspection request.

Both physical and electronic I-9 verification folders contain sensitive personal information. This information must be safeguarded. Paper documents should be, at minimum:

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<sup>5</sup> Additional information regarding a "hire," per USCIS, versus continuing employment may be found at <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/continuing-employment>.

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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- stored in locked filing cabinets,
- with access limited to employees who complete Form I-9s or E-Verify cases, and other employees who are authorized to have access to employee personnel records.

An electronic storage system must:

- Include controls to ensure the protection, integrity, accuracy and reliability of the electronic generation storage system.
- Include controls to detect and prevent the unauthorized or accidental creation of, addition to, alteration of, deletion of or deterioration of an electronically completed stored Form I-9, including the electronic signature, if used.
- Include controls to ensure an audit trail so that any alteration or change to the form since its creation is electronically stored and can be accessed by an appropriate government agency inspecting the forms.
- Include an inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used.
- Include a detailed index of all data so that any particular record can be accessed immediately.
- Produce a high degree of legibility and readability when displayed on a video display terminal or reproduced on paper.<sup>6</sup>

HR Staff should confer with your CIO, CISO or delegated authority on the best way to ensure any electronic storage of Form I-9s and associated documents meets these requirements.

### § 6.2. Retention of Documents

Agencies are required to retain Form I-9s for the duration of a person's employment. If a person separates from an agency or university, the form must be kept

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<sup>6</sup> [Retention and Storage | USCIS](https://www.uscis.gov/i-9-central/complete-correct-form-i-9/retention-and-storage), [www.uscis.gov/i-9-central/complete-correct-form-i-9/retention-and-storage](https://www.uscis.gov/i-9-central/complete-correct-form-i-9/retention-and-storage)

## Form I-9 and Employment Eligibility Verification Policy (cont.)

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on file for at least three years after the person's start date, or for one year after the separation date, whichever is later. Confirmations that new employees have been verified as eligible to be employed through E-Verify should be attached to Form I-9s and maintained for the same length of time as the Form I-9.

**Advisory Note:** If utilizing a paper-based storage system, documents used to establish work authorization should be photocopied and stapled to the original Form I-9. If utilizing an electronic storage system, these documents should be scanned and added to the employee's Employment Verification folder.

Proof of legal employment eligibility in the United States must be maintained throughout an employee's tenure with the employer. Therefore, State agencies, departments, institutions, community colleges, and local education agencies must remain cognizant of the fact that certain employees may only be legally eligible to work in the United States for limited periods of time. If an employee's legal employment eligibility is temporary, it is the employer's responsibility to verify that the employee renews their employment eligibility or separate that person from employment upon expiration of the temporary eligibility period.

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### § 7. Re-verification

Re-verification of an employee's eligibility to work in the United States should only be conducted on those employees who attested in Section 1 of the Form I-9 that they are noncitizens authorized to work in the United States for a limited period of time. Reverification is not required, and are not permitted to be completed, on United States Citizen and Lawful Permanent Resident employees. The E-Verify Program is not to be used for reverification purposes. Thus, reverification of employment eligibility only involves the physical examination of employment eligibility documents, not the electronic verification of those documents. If the employee's documents are reverified electronically, the employer will be in violation of the Memorandum of Understanding, which details the employer's E-Verify Program obligations, as required by the United States DHS.

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## Form I-9 and Employment Eligibility Verification Policy (cont.)

### § 8. Sources of Authority

This policy is issued pursuant to any and all of the following:

- [N.C.G.S. § 126-4\(3\)](#), which authorizes the State Human Resources Commission to establish policies governing “reasonable qualifications as to ... job-related requirements pertinent to the work to be performed.”
- [N.C.G.S. § 126-4\(4\)](#), which authorizes the State Human Resources Commission to establish policies governing “[r]ecruitment programs designed to ... determine the relative fitness of applicants for the respective positions.”

This policy is compliant with:

- [8 U.S.C. § 1324a](#), Immigration Reform and Control Act
- [N.C.G.S. § 126-7.1\(i\)](#) which states that each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States.
- [25 NCAC 01H .0636](#), which establishes that all State agencies “shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986,” using the E-Verify program.

### § 9. History of This Policy

Date	Version
September 1, 2007	New Policy. New policy on employment of foreign nationals in the United States.
December 3, 2020	Policy reviewed. Advisory note is now included in the body of the policy. Policy is correct and operating as written.
October 19, 2023	Changed the name of the policy from “Immigration/Employment of Foreign Nationals Policy” to “Form I-9 and Employment Eligibility

## Form I-9 and Employment Eligibility Verification Policy (cont.)

	<p>Verification Policy.” Added a footnote to explain that the “Basic Pilot Program” is now called “E-Verify.” Changed the term “alien” to “noncitizen” to match language on revised Form I-9.</p> <p>Revised the first advisory note to explain that, given the sensitive nature of the information contained on Form I-9s, documents should be processed sequentially, rather than concurrently, meaning only one Form I-9 and associated documents should be processed at one time.</p> <p>Detailed the requirements for a remote verification of Form I-9 documentation procedure, including the requirement for secure transmission of personally identifiable information.</p> <p>Added language to Section 3, E-Verify, to explain employers may not take adverse employment actions when certain results are received from E-Verify. Included references and links to the E-Verify website and manual.</p> <p>Edited Section 5, Continuing Employment, to utilize language more consistent with USCIS guidance.</p> <p>Added information on the appropriate storage of paper and electronic Form I-9s and associated documentation to Section 6.</p> <p>Added “Sources of Authority” section.</p>
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