

Answers to Ten Key Questions about the New Form I-9

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USCIS has released a new version of the Form I-9, which all employers must use beginning no later than 1/22/17. We've closely tracked its release. Here are answers to 10 key questions about the new Form I-9.

1. I'm too busy to read alerts around the holidays. Tell me what I need to do and when.

All employers **must use the newest Form I-9 version to verify the employment eligibility of new hires beginning no later than 1/22/17**. Until then, employers can use either the new version (edition date 11/14/16) or the last version that's been in effect since 2013 (the 03/08/13 edition).

2. Why do I keep seeing alerts calling the new Form I-9 version a "Smart" I-9 Form?

USCIS elected to "upgrade" its newest version of the Form I-9 to **a fillable and interactive PDF** in which users could fill in the fields of the forms on their computers before printing and signing a hard copy. When a user **opens the "Smart" I-9 in Adobe Reader**, the fillable PDF form limits options for further responses based on information previously provided, flags errors and fields where information is missing, provides a link to the form instructions, and includes additional instructions for specific fields that's available by hovering over a "?" icon that appears above a field within the PDF.

3. How did the Smart I-9 roll-out go?

Not too well. USCIS's intentions were good in providing an interactive Form I-9 that would help eliminate common errors in form completion; however, **the roll out of the Smart I-9 was a bit rocky**.

The main issue is that to access the fillable PDF, the form needs to be opened using the latest version of Adobe Reader. This was a **problem for many who use other versions of Adobe or an alternative (often default) PDF viewer** to open the form.

USCIS decided after the "Smart" form had been posted for a few days that the issues with accessing the document and glitches that USCIS was working hard to correct were serious enough that it needed to provide an alternate "flat" version of the newest I-9 version on its website that lacked any fillable or interactive features so that all employers could access the I-9. USCIS is calling this the "paper" version of the new form, and we expect that it will remain posted on the USCIS website for the foreseeable future. There was so much confusion that USCIS even re-posted the 3/8/13 version of the I-9 on its website with the note that employers should not use it after 1/22/17.

4. I'm confused — is this new version an electronic I-9?

No. It's smart, but not that smart.

The new USCIS fillable PDF version **still must be printed and then signed in hard copy** by both the employee and the employer representative. Printing the "Smart" form with no information filled-in on the computer will result in exactly the same paper I-9 form as printing the flat/paper form on the USCIS website.

USCIS has compounded confusion around this by labeling the "flat" PDF version that doesn't require Adobe Reader on its website as "*Form I-9 Paper Version (This version is unfillable and must be printed for completion on paper only).*" USCIS intended this designation to differentiate this PDF from the one that can be populated online with interactive features before printing, but it's a poor designation because it suggests that the "Smart I-9" isn't a paper form. **Both versions of the Form I-9 PDF on uscis.gov are "paper versions,"** given that each must be completed by printing and signing the document.

5. If the employee fills out the form in Adobe for Section 1 and then prints it, must I as the employer representative do the same (and vice-versa?)

No. There's no requirement that employees and/or employers fill in any information on the "Smart" PDF before printing a hard copy. **It's still just fine to fill in the Form I-9 by hand for any section.**

Also, employees and employers can complete their sections differently. An employee could, for example, fill-in Section 1 on the "Smart" form, print, and sign page 1 of the I-9. The employer could then use a pre-printed page 2 of the latest I-9 version, hand write in the responses and sign the document, making sure to keep these two separate pages together for retention. Alternatively, a new hire could fill-in Section 1 by hand and the employer could complete Section 2 in the Adobe fillable version, print and sign.

6. Has the Form itself changed?

Yes. Employers will find that the Form I-9 in many ways is very similar to the previous version, but **some individual fields and the form instructions have been revised.** The core requirements of the form have not changed: Section 1 must be completed by the end of the first day of work for pay; Section 2 must be completed no later than COB on the 3rd day after the date of hire; and the employer must review any acceptable original document (or combination of documents) that the employee chooses to provide. The retention requirements are also the same.

Employers should, of course, read the new Form I-9 instructions in full and also review the content of the new I-9 version carefully. Employers should also note that for the time being, until a new version is available (anticipated release is January 2017), the M-274 Handbook for Employers is outdated in many respects relating to the new form. **Each new hire must be provided a full copy of the Form I-9 instructions.**

7. What do you anticipate will be the most common errors resulting from the change to the form?

Employers should note the following changes early on to avoid what will likely be very common errors:

The Form I-9 instructions now indicate that the employee, in filling out Section 1, should indicate **“N/A” in any/all fields which do not apply and/or to which the employee chooses not to give a response**. For example, the form asks for the employee’s e-mail address and phone number. If an employee chooses not to provide this (voluntary) information, the instructions indicate the employee should write “N/A” in the fields. That will seem counterintuitive to a lot of people. Most have such contact information, whether or not they choose to provide it on the form. Same for the SSN information for employees who are hired by employers who are not enrolled in E-Verify and opt not to include this information on their I-9.

There’s also now a field where the **employee needs to affirmatively check a box indicating that he or she did not use a preparer or translator** (if that’s in fact the case). That certification is under the employee signature line and in a boxed off section in the Preparer/Translator section of the form, which, at first glance, looks like something that a preparer and/or translator should respond to. This is an important double check for all employers to ensure that this box is completed by the new hire.

Section 1 can only be updated by the employee, so employers should carefully review the content of Section 1 in real time as the form is being completed to ensure all fields are properly completed before they complete Section 2. Otherwise, it will be at best inconvenient and, if the employee has left the company, it may be impossible, to correct issues down the road — like if the employee didn’t write “N/A” under apartment number or “Other names used” when those fields don’t apply.

Additionally, just when employers got used to making sure that they wrote in the employee information at the top of page, USCIS has added a new (confusing) field to the top of page 2 where the employer must indicate the “Citizenship/immigration” status of the new hire by reviewing Section 1, noting the box the employee checked, and then writing the corresponding number of that box from page 1 in the related field at the top of page 2.

8. Should I go out of my way to use the “Smart” form?

No, but there’s also no reason to avoid it if you can make smart use of the “Smart” form.

The **fillable “Smart” Form I-9 is a helpful tool** in eliminating errors in I-9 form completion. It flags fields where USCIS requires a response and limits data entry options based on other information inputted in the form by the individual completing it. The new fillable I-9 is a good fit if your on-boarding process involves the new hire sitting down at a company computer to complete the I-9 on the first date of hire and you can ensure that the employee has access to the current version of Adobe Reader, the internet, and a printer.

If you normally send a hard copy of the I-9 and instructions to new hires with the request that they complete Section 1 and bring it with them on their first day of work or have employees fill-out Section 1 where there is not a computer available at the worksite, the fillable PDF may not be much help, and having the employee hand write responses in Section 1 on a hard copy may

continue to be your best option. **The emphasis should always be on creating a verification practice that works for your company and new hires so that the Form I-9 is completed correctly and in a timely manner.**

While it's probably not worth going out of your way to have an employee use the "Smart" Adobe Reader version — especially if it may result in the form not being signed by close of the first day of work for pay — there's enough benefit to the "Smart" form that employers shouldn't write it off completely. Employers may want to **consider** structuring their orientation and on-boarding to **provide an opportunity for employees to complete Section 1 in the fillable PDF** on-site or provide information to their new hires that includes a link to the USCIS website for Form I-9 where new hires could access and use the fillable version if they are asked to complete Section 1 at home before starting employment.

9. My company uses an electronic I-9 system. Can I ignore all of this?

Sorry, but no. All employers, whether they have an electronic component to their I-9 verification process at any point or not, need to use the new I-9 version by the required **deadline**. So, if you've created your own system, make sure that you make any necessary upgrades by 1/22/17. If you **rely on a vendor for your electronic I-9 needs, employers should keep an eye on their systems** and do a baseline comparison of the electronic product and the fields and requirements of the new I-9 version to ensure that the vendor hasn't dropped the ball in any way in terms of upgrading to the new version.

The fillable PDF option makes no change to employers' ability to electronically complete, sign, and/or store their I-9s, provided they continue to **comply with the specific requirements** relating to electronic I-9s.

10. Any relief around I-9 completion challenges for new remote hires?

Nope. New hires who are employed remotely **continue to be a challenge** for the I-9 process, given the in-person document review process by an employer representative. While the "Smart" I-9 was an attempt to leverage technology to assist employees and employers in the I-9 process, USCIS has continued to take the position that there would need to be a change in the related I-9 regulations to allow employers to, for example, FaceTime or Skype with their new hires to review documents.

Employers need to pay particular attention to their I-9 practices for remote hires moving forward, as these tend to carry an increased risk for errors, given employers may be relying on notaries or other agents to complete the form on their behalf.

If you have questions about the new Form I-9, please contact [Katie Minervino](#) or [Tony Derosby](#).

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