

# Form I-9 Overview & Compliance

# Form I-9: Overview

# Requirements and Completion

- ▶ Form I-9 is required for the following individuals:
  - ▶ Employee hired after November 6, 1986
- ▶ Employer must use current Form I-9 with revision date of 08/01/2023 for all new hires and reverifications
- ▶ Employer may delegate the authority to complete Form I-9 to an authorized representative
  - ▶ Employer will retain liability for any errors

# Employer Responsibilities

- ▶ To comply with the employment eligibility verification provisions Employer must:
  - ▶ Verify the identity documents
  - ▶ Verify the employment authorization documents
  - ▶ Complete and retain a Form I-9
- ▶ Employers must refrain from discriminating against individuals on the basis of actual or perceived national origin, citizenship or immigration status

# Preventing Discrimination

- ▶ The anti-discrimination provisions of the INA prohibit four types of unlawful conduct:
  - ▶ Citizenship or immigration status discrimination\*
  - ▶ National origin discrimination\*
  - ▶ Unfair documentary practices during Form I-9 process
  - ▶ Retaliation

\*Actual or perceived discrimination

# Form I-9 Exceptions

- ▶ Form I-9 is not required for the following Individuals:
  - ▶ Employee hired before 11/6/1986
  - ▶ Independent contractors who do not have set work hours or employer-provided tools to do the job
  - ▶ Casual domestic service Employee working in a private household when work is sporadic, irregular or intermittent
  - ▶ Employee working outside the U.S.

# Basic Concepts



- Employee **accepts offer** for employment



- Employee **completes Section 1** of the form no later than 1st day of work for pay



- Employee **gives documents and form** to employer



- Employer **completes Section 2** of the form no later than the 3<sup>rd</sup> business day employee starts work for pay



- If Employee's work authorization expires, **complete Supplement B**

# Section 1: Employee Information and Attestation



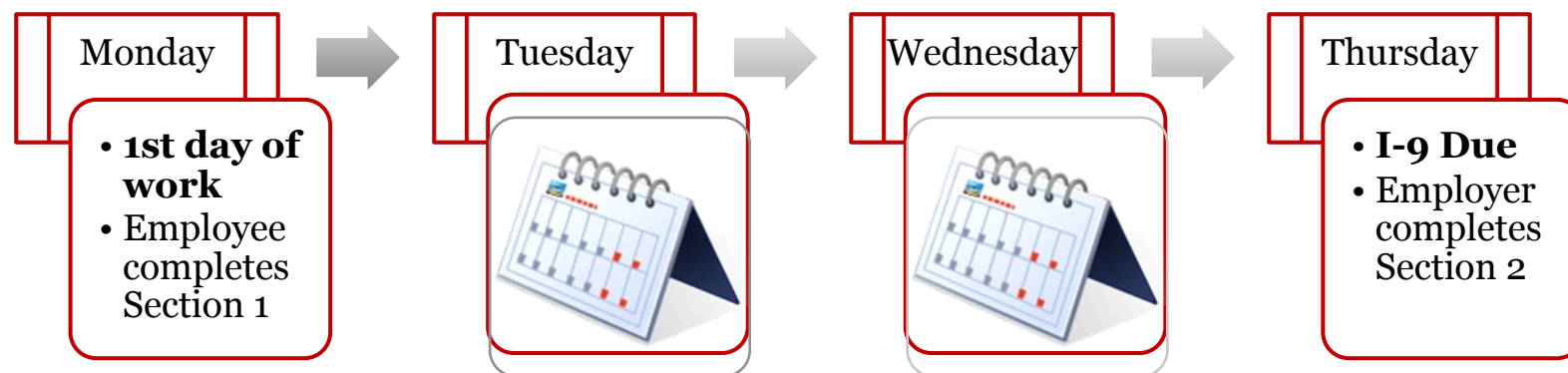
# Employee Information and Attestation

**Section 1. Employee Information and Attestation:** Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)		
Address (Street Number and Name)		Apt. Number (if any)	City or Town		State	ZIP Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number		
<p>I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.</p>	<p>Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):</p> <p><input type="checkbox"/> 1. A citizen of the United States</p> <p><input type="checkbox"/> 2. A noncitizen national of the United States (See instructions.)</p> <p><input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)</p> <p><input type="checkbox"/> 4. A noncitizen (other than item Numbers 2. and 3. above) authorized to work until (exp. date, if any)</p>						
	<p>If you check item Number 4., enter one of these:</p>						
	USCIS A-Number		OR	Form I-84 Admission Number		OR	Foreign Passport Number and Country of Issuance
Signature of Employee					Today's Date (mm/dd/yyyy)		
<p>If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the <a href="#">Preparer and/or Translator Certification</a> on Page 3.</p>							

# Requirements and Completion

- ▶ Employee must complete Section 1 no later than 1st day of work for pay:
  - ▶ Employee Social Security Number required for E-Verify
  - ▶ Employee e-mail address optional
    - ▶ If provided, Employer must enter it in E-Verify



# Employer Responsibilities

- ▶ Employer must review the information Employee provided in Section 1 to ensure:
  - ▶ They completed all required fields;
  - ▶ They provided their Social Security numbers, if Employer participates in E-Verify.
    - ▶ If Employer does not participate in E-Verify, Employees is not required to enter their Social Security number.
  - ▶ They signed and dated their forms; and
  - ▶ The preparer or translator completed, signed, and dated a certification block on Supplement A and/or Translator Certification for Section 1 if the employee used a preparer or translator.

# Section 2: Employer Certification of Document Review

# Employer Certification of Document Review

**Section 2. Employer Review and Verification:** Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.

	List A	OR	List B	AND	List C
Document Title 1					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 2 (if any)	Additional Information				
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.					
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.					First Day of Employment (mm/dd/yyyy): _____
Last Name, First Name and Title of Employer or Authorized Representative _____			Signature of Employer or Authorized Representative _____		Today's Date (mm/dd/yyyy) _____
Employer's Business or Organization Name _____			Employer's Business or Organization Address, City or Town, State, ZIP Code _____		

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

# Requirements and Completion

- ▶ Employer must complete Section 2 no later than 3 business days after the employee begins work for pay
  - ▶ Employer must record the title, number and expiration date, of any, of the document(s)
- ▶ The person that examines the original, unexpired documents in the presence of the employee must fill out, sign and date Section 2
  - ▶ Section 2 includes two spaces that require dates for:
    - ▶ Employee's "first day of employment" which means the commencement of employment of an employee for wages or other remuneration; and
    - ▶ The date Employer examined the documentation the employee presented to show identity and employment authorization

# Employer Responsibilities

- ▶ Employer CANNOT specify which document(s) they will accept from an employee
- ▶ Employer must examine ONE document from List A OR List B AND List C
- ▶ Document must be original:
  - ▶ Photocopies are NOT acceptable, except for a certified copy of birth certificate



# Authorized Representatives

- ▶ Can be any person an Employer designates, hires, or contracts with to complete, update, or make corrections to Section 2 (or 3) of Form I-9 on their behalf.
  - ▶ Must perform all duties on behalf of Employer, including reviewing the employee's completed Section 1, either physically or remotely
  - ▶ Employer is liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws, committed by the authorized representative
- ▶ Employer is not required to have a contract or other specific agreement with the authorized representative for Form I-9 purposes
- ▶ Employees cannot act as authorized representatives for their own Form I-9



# Document Examination

- ▶ Employer must accept a document presented by an Employee if it reasonably appears to be:
  - ▶ Genuine
    - AND -
  - ▶ Relates to the individual presenting it
- ▶ The document must be original
  - ▶ Photocopies are NOT acceptable, except for a certified copy of a birth certificate
- ▶ If Employer feels the document does not reasonably appear to be genuine and relate to the Employee, allow them to present other documentation from the List of Acceptable Documents

# Optional Remote Document Examination

- ▶ Employers enrolled in E-Verify may remotely examine documents
- ▶ To participate, Employer must:
  - ▶ Review and retain copies of all documents
  - ▶ Conduct a live video interaction with new hire
  - ▶ Indicate use of the alternative procedure on the Form I-9

# List A Documents

- ▶ U.S. Passport or U.S. Passport Card
- ▶ Form I-551, Permanent Resident Card or Alien Registration Receipt Card, including:
  - ▶ Current Permanent Resident Card issued after 01/30/2023
  - ▶ Permanent Resident Card issued through January 2021 containing USCIS-issued sticker extending validity period
  - ▶ Previous Permanent Resident Card issued before 01/30/2023
- ▶ Foreign passport containing a Form I-551 stamp or Form I-551 printed notation
- ▶ Form I-766, Employment Authorization Document

# List A (cont.)

- ▶ Foreign passport with Form I-94 or Form I-94A with Arrival-Departure Record, and containing an endorsement to work
  - ▶ May only be used if period of endorsement has not yet expired and proposed employment does not conflict with any restrictions or limitations listed on Form I-94 or I-94A
  - ▶ Certain nonimmigrant students and exchange visitors must present additional documentation evidencing work authorization in the U.S.
- ▶ Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A

# List B Documents

- ▶ Driver's license issued by a state or outlying U.S. possession with photograph or information such as name, date of birth, gender, height, eye color and address
- ▶ ID card issued by a state or outlying possession
- ▶ School ID card with photo
- ▶ Voter registration card
- ▶ U.S. Military card or draft record
- ▶ Military dependent's ID card
- ▶ U.S. Coast Guard Merchant Mariner Card
- ▶ Native American tribal document
- ▶ Canadian driver's license or ID card with photograph

# List B Documents (cont.)

- ▶ Acceptable documents for individuals under the age of 18 who are unable to present a List B document:
  - ▶ School record or report card
  - ▶ Clinic, doctor or hospital record
  - ▶ Day care or nursery school record
- ▶ For minors under the age of 18 and certain individuals with disabilities who are unable to produce any of the listed identity documents, special notations may be used in place of a List B document

# List C Documents

- ▶ A Social Security Card, unless the card includes one of the following restrictions:
  - ▶ Not valid for employment
  - ▶ Valid for work only with INS Authorization
  - ▶ Valid for work only with DHS Authorization
- ▶ Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying territory of the United States bearing an official seal
- ▶ Native American tribal document
- ▶ Form I-197, U.S. Citizen ID Card
- ▶ Form I-179, Identification Card for Use of Resident Citizen in the United States

# List C Documents (cont.)

- ▶ Document issued by the U.S. Department of State (“DOS”) evidencing U.S. Citizenship, including:
  - ▶ Form FS-240, Consular Report of Birth Abroad
  - ▶ Form FS-545, Certification of Birth Abroad
  - ▶ Form DS-1350, Certification of Report of Birth



# List C Documents (cont.)

- ▶ Employment authorization document issued by the Department of Homeland Security (DHS), including:
  - ▶ Form I-94 Arrival/Departure Record issued to asylees or work-authorized nonimmigrants (for example, H-1B nonimmigrants) because of their immigration status
  - ▶ Form I-571, Refugee Travel Document
  - ▶ Unexpired Form I-327, Reentry Permit
  - ▶ Form N-560, Certificate of U.S. Citizenship or Form N-561, Replacement Certificate of Citizenship
  - ▶ Form N-550, Certificate of Naturalization or Form N-570, Replacement Certificate of Naturalization (PDF, 176.3 KB).
  - ▶ Form I-797 issued to a conditional resident may be an acceptable List C document in combination with an expired Form I-551.

# Redesigned Permanent Resident Card & Employment Authorization Document

- ▶ On January 30, 2023, USCIS announced new designs for tamper-resistant Form I-551, Permanent Resident Cards (also known as Green Cards), and Form I-766, Employment Authorization Documents (EADs)
  - ▶ Current and prior versions of the cards are acceptable for Form I-9, Employment Eligibility Verification, and E-Verify



Permanent Resident Card (Form I-551)



Employment Authorization Document (Form I-766)

# Copying Documents

- ▶ Employer may choose to make copies of documents presented by employee
  - ▶ If Employer chooses to photocopy documents, Employer must:
    - ▶ Do so for ALL Employee
    - ▶ Be consistent and copy all documents Employee provides
- ▶ Employers enrolled in E-Verify must photocopy the following documents, if voluntarily provided by the Employee:
  - ▶ U.S. Passport or Passport Card
  - ▶ I-551 Lawful Permanent Resident Card
  - ▶ I-766 Employment Authorization Document

# Receipt Rule

- ▶ Employer may accept a receipt showing that Employee has applied to replace a document that was lost, stolen or damaged:
  - ▶ Receipt must be issued by the originating agency
  - ▶ Receipts are never acceptable if employment will last less than three business days
- ▶ Employee must present original replacement document or another acceptable document (or documents) within 90 days of the hire date
- ▶ E-Verify cases should be delayed until the replacement document is provided

# Supplement A: Preparer/Translator Certification

# Supplement A: Preparer/Translator Certification



## Supplement A, Preparer and/or Translator Certification for Section 1

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

USCIS  
Form I-9  
Supplement A  
OMB No. 1615-0047  
Expires 08/31/2026

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle Initial (if any) from Section 1.

**Instructions:** This supplement must be completed by any preparer and/or translator who assists 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 above. 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 (mm/dd/yyyy)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial (if any)	
Address (Street Number and Name)	City or Town	State	ZIP Code
		<input type="text"/>	

# Requirements and Completion

- ▶ Completed by individuals who assist Employee in completing and/or translating Section 1
- ▶ Preparer/translator who helps employee must:
  - ▶ Provide name and home address (not the company address)
  - ▶ Sign and date a separate Supplement A certification block
- ▶ Employee must sign and date the form even if a preparer or translator helps them:
  - ▶ Date entered next to their signature should match the date the preparer/translator signed Supplement A

# Employer Responsibilities

- ▶ Employer must retain completed supplement pages with the employee's completed Form I-9 and ensure:
  - ▶ All required fields are completed
  - ▶ Preparer/translator completed, signed, and dated certification block on Supplement A and/or Translator Certification
  - ▶ Employee signed and dated Section 1
  - ▶ Employee provided their Social Security number if Employer participates in E-Verify



# Supplement B: Reverification and Rehires (formerly Section 3)

# Supplement B: Reverification and Rehires



**Supplement B,  
Reverification and Rehire (formerly Section 3)**  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
**Form I-9  
Supplement B**  
OMB No. 1615-0047  
Expires 08/31/2026

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle Initial (if any) from Section 1.
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Instructions:** This supplement replaces Section 3 on the previous version of Form I-9. Only use this page if your employee requires reverification, is rehired within three years of the date the original Form I-9 was completed, or provides proof of a legal name change. Enter the employee's name in the fields above. Use a new section for each reverification or rehire. Review the Form I-9 instructions before completing this page. Keep this page as part of the employee's Form I-9 record. Additional guidance can be found in the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#)

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	Last Name (Family Name)	First Name (Given Name)	Middle Initial
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Reverification: If the employee requires reverification, your employee can choose to present any acceptable List A or List C documentation to show continued employment authorization. Enter the document information in the spaces below.			
Document Title	Document Number (if any)	Expiration Date (if any) (mm/dd/yyyy)	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented documentation, the documentation I examined appears to be genuine and to relate to the individual who presented it.			
Name of Employer or Authorized Representative	Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Additional Information (Initial and date each notation.)			<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
<input type="text"/>			

# Employer Responsibilities

- ▶ Employer must reverify an employee using Supplement B, if:
  - ▶ Employee's temporary employment authorization status or temporary EAD has expired
- ▶ Employer may reverify an employee using Supplement B, if:
  - ▶ Employer rehires the employee within 3 years of the date Form I-9 was completed
  - ▶ Employee's biographic information needs to be updated
- ▶ Employer should not reverify:
  - ▶ U.S. citizens and noncitizen nationals;
  - ▶ Lawful permanent residents who presented a Form I-551, Permanent Resident or Alien Registration Receipt card for Section 2, including conditional residents or List B documents

# When to Reverify

Reverify	Do NOT Reverify
<ul style="list-style-type: none"><li>➤ Employment Authorization Document (Form I-766) with an expiration date</li><li>➤ Form I-94 with temporary I-551 stamp</li><li>➤ Unexpired foreign passport with temporary I-551 stamp</li></ul>	<ul style="list-style-type: none"><li>➤ U.S. citizens and noncitizen nationals</li><li>➤ U.S. passports or passport cards</li><li>➤ Unexpired Permanent Resident or Alien Registration Receipt card (Form I-551)</li><li>➤ Expired Permanent Resident Card presented with Form I-797</li><li>➤ List B documents</li></ul>

# Requirements and Completion

- ▶ Completed by Employer for Employee who is rehired or whose employment authorization requires reverification
- ▶ When completing Supplement B, Employer must:
  - ▶ Examine the unexpired documents to determine if they appear to be genuine and relate to the employee
  - ▶ Record the document title, document number and expiration date (if any)
  - ▶ Sign and date Supplement B

# Requirements and Completion (cont.)

- ▶ Supplement B includes three spaces to enter dates:
  - ▶ If Employer rehires a former employee:
    - ▶ Enter the rehire date that employee begins employment for wages or other remuneration, which can be a future date, if necessary, in the Date of Rehire field
  - ▶ If Employer re verifies a current employee:
    - ▶ Enter the date the employee's new work authorization document expires in the Expiration Date field
  - ▶ When completing Supplement B for any reason:
    - ▶ Enter the date and sign attestation field

# Updating and reverifying Form I-9

- ▶ Employer must complete Supplement B when reverifying Form I-9
- ▶ Employer must reverify employment eligibility of their Employee on or before the expiration date recorded in Section 1 (based on I-94 Card, Employment Authorization Document, etc.)
- ▶ Reverification must be made on current Form I-9
- ▶ Do not need to reverify List B documents
- ▶ Do not need to reverify “Green Cards” with Expiration dates (even Conditional Permanent Residents)
- ▶ Reverifying documents that do not require reverification can subject Employers to a fine for document abuse

# Form I-9: Compliance

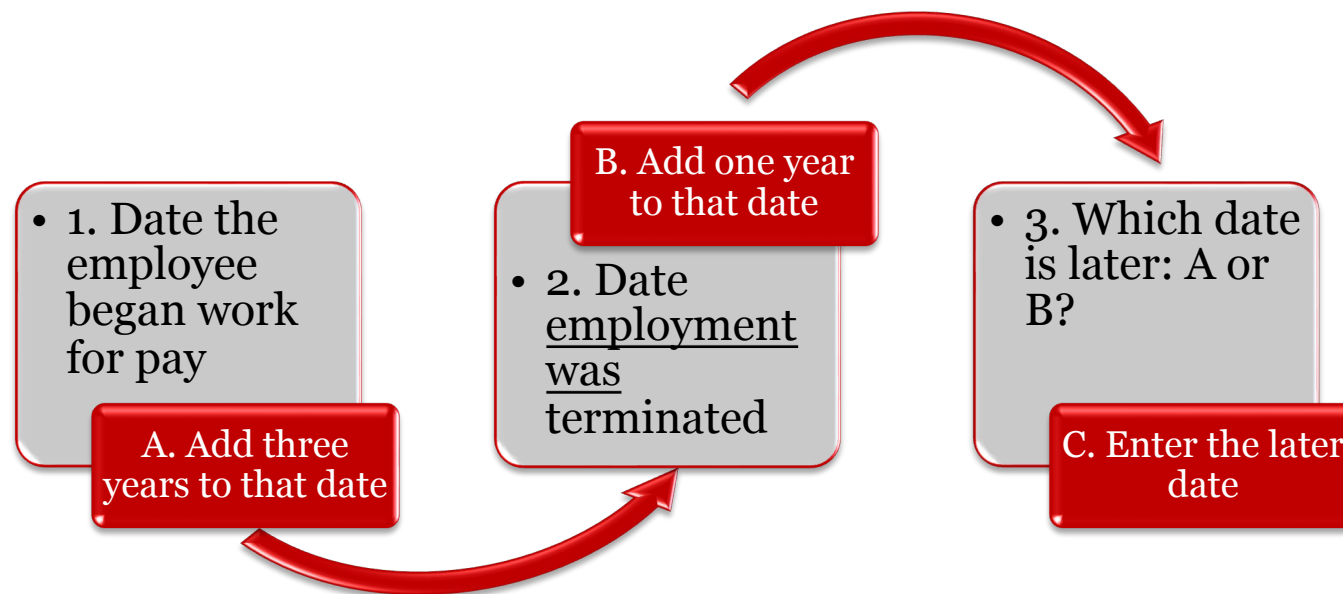


# Form I-9 Storage

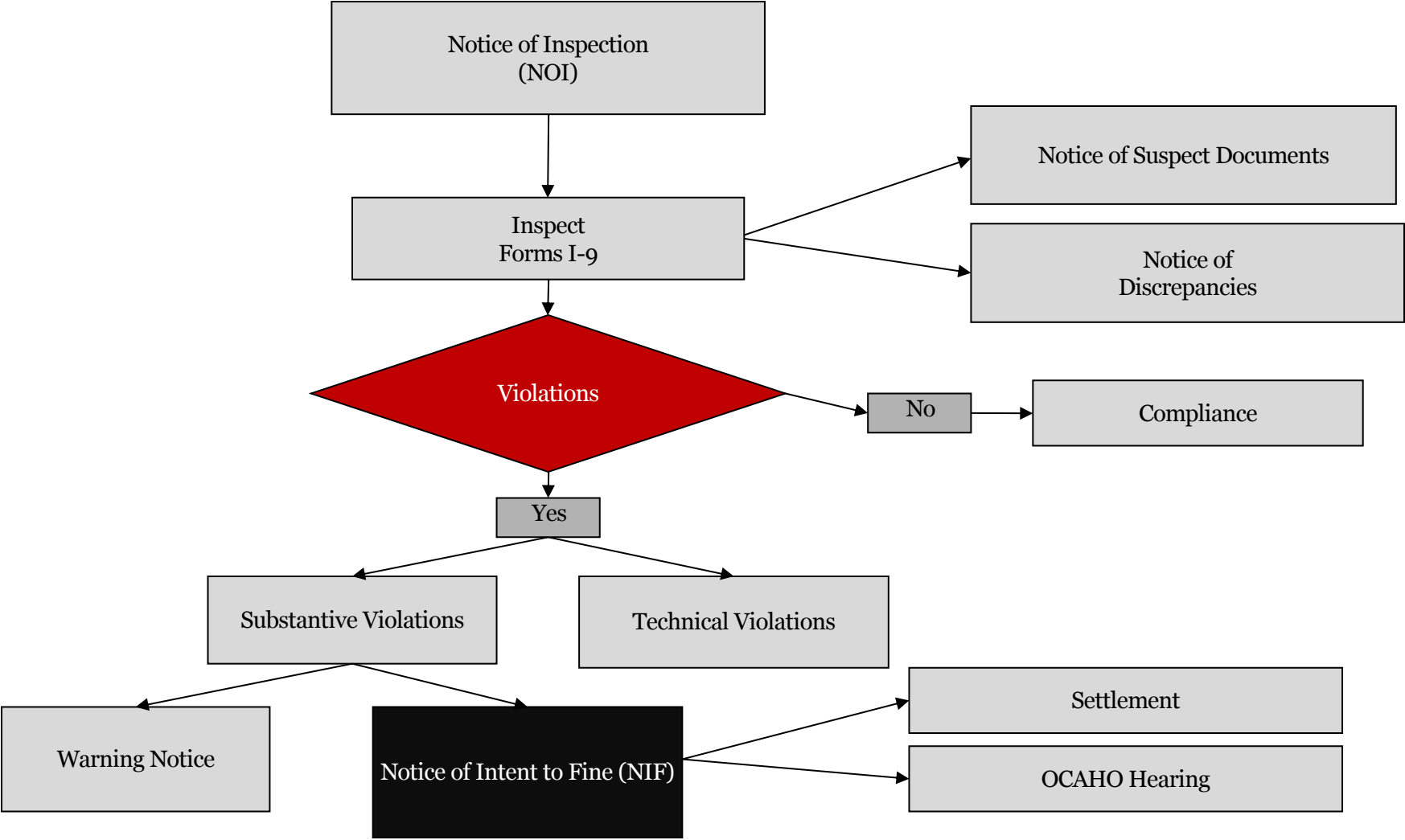
- ▶ Employers have a Form I-9 on file for all current employees, and:
  - ▶ Store Forms I-9 securely in a way that meets your business needs -on site, off-site, storage facility
  - ▶ Store copies of documents with the Form I-9 or with the employee's records
  - ▶ Ensure that only authorized personnel have access to stored Forms I-9
  - ▶ Make Forms I-9 available within three days of an official request for inspection

# Form I-9 Retention

- ▶ Calculate how long to retain an employee's Form I-9 once they end employment:
  - ▶ If Employee worked for less than two years, retain their form for 3 years after the date entered in the 1<sup>st</sup> Day of Employment field.
  - OR -
  - ▶ If Employee worked for more than 2 years, retain their form for 1 more year after the date they stop working.



# Form I-9 Inspection Process



# Paperwork Violations Penalties

- ▶ Amount of fine depends on following:
  - ▶ Size of business
  - ▶ Employer good faith in completing I-9
  - ▶ Seriousness of violation
  - ▶ Employment of unauthorized aliens
  - ▶ Employer's history
- ▶ No criminal penalties

# Penalties for Substantive and Uncorrected Technical Violations

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## Enhancement Matrix

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Worker(s)	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

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# I-9 Self-Audit

- ▶ Conducting a self-audit is the most important proactive measure an employer can take
- ▶ Audit may be conducted by in-house staff or outside counsel
- ▶ Document audit and corrective action by preparing a memo to the file, including:
  - ▶ Date of audit
  - ▶ Results of audit, i.e. issues identified
  - ▶ How corrective action was performed

# Common Problems

- ▶ Employer/Employee fails to sign Form I-9
- ▶ Employer completes Section 1 for employee
- ▶ Employer fails to note document numbers and expiration dates in Section 2
- ▶ Employer fails to complete Section 2 of Form I-9 and merely attaches photocopies of acceptable documents to the form
- ▶ Form I-9 is not completed on a timely basis
- ▶ Employer requests specific documents evidencing identity and/or employment eligibility
- ▶ Employer fails to request original documents and accepts photocopies or faxed documents
- ▶ Form I-9 is discarded too soon
- ▶ Failure to reverify when necessary

# Correcting Mistakes

- ▶ If a mistake is discovered, Employer must:
  - ▶ Correct the existing Form I-9
    - OR -
  - ▶ Prepare a new Form I-9
- ▶ If Employer chooses to correct the existing Form I-9:
  - ▶ Employer should draw a line through the incorrect portions, enter the correct information, and initial and date the correction
- ▶ If Employer chooses to prepare a new Form I-9:
  - ▶ Employer should keep the old form with the new form
    - AND -
  - ▶ Attach a short memo to both the new and old Forms I-9 stating the reason for the correction



# Missing Information

- ▶ If missing Form I-9 for an employee, Employer must:
  - ▶ Give the employee the current version of the Form I-9
  - ▶ Complete the form as soon as possible
    - ▶ Do not backdate the form
  - ▶ Attach a signed and dated explanation of the corrective action

# Checklist for I-9 Audit - Other Reminders

- ▶ Did you make a copy of the document(s) presented by the employee (if company policy requires you to do so)?
- ▶ If a receipt was presented to evidence work authorization, was the form included in the reverification tickler system?
- ▶ If the employee listed an expiration date in Section 1 or a List A or List C document contains an expiration date, was the date included in the reverification tickler system (ignore an expiration date contained in a U.S. passport, Form I-551, or List B document)?

# Summary

- ▶ Make I-9's a priority
- ▶ Provide training to hiring personnel
- ▶ Conduct a self-audit of your I-9s
- ▶ Take action to correct I-9s as soon as possible

# Questions?

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