

# USCIS Issues Updated I-9 Guidance Due to Employment Authorization Document Production Delays

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By [Jamie M. Dietz](#) and [Eric R. Leder](#)



As the U.S. Citizenship and Immigration Services (USCIS) continues to operate under the stress of the ongoing COVID-19 pandemic and anticipated budget shortfalls, the production of certain Employment Authorization Documents (Form I-766, EAD) has become increasingly delayed. On August 19, 2020, in response to this situation, USCIS issued guidance providing employers and employees some flexibility to mitigate the myriad of I-9 compliance issues associated with the delays in EAD production.



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Under the instructions for Form I-9, Employment Eligibility Verification, employees may present an EAD as an acceptable List A document to verify identity and employment authorization. The new guidance temporarily allows employees to present a Form I-797 Notice of Action related to an approved Form I-765 application, where the application was approved from December 1, 2019, through August 20, 2020, as a [List C document](#) for I-9 verification and reverification. Although USCIS explicitly states that the Form I-797 Notice of Action “is not evidence of employment authorization,” this temporary guidance allows employers to accept the Form I-797 until December 1, 2020, as a List C document to establish that employment authorization has been issued by the U.S. Department of Homeland Security.

New employees who present their Form I-797 Notice of Action to complete the I-9 verification process are also required to present an acceptable List B document to establish their identity. Current employees who need to complete the I-9 reverification process also may present their Form I-797 Notice of Action as a valid List C document.

The guidance requires employers to reverify all employees who presented a Form I-797 Notice of Action as a List C document by December 1, 2020.

Ogletree Deakins' Immigration Practice Group will continue to monitor developments with respect to the USCIS policy changes and will post updates on the [Immigration](#) blog and in the firm's [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Important information for employers is also available via the firm's [webinar programs](#).

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