



white paper

USCIS TO TERMINATE LIST B DOCUMENT FLEXIBILITIES EFFECTIVE MAY 1, 2022

Employers are required to change current document processes and amend or audit Forms I-9 which had been completed using expired List B Documents.



Unless otherwise stated in the Handbook for Employers (M-274), expired documents are not acceptable for Form I-9 verification purposes.¹ However, due to agency closures and preventative measures taken in light of the COVID-19 pandemic, United States Citizenship and Immigration Services (USCIS) allowed employers to accept expired List B identity documents for Form I-9 purposes.² USCIS announced that beginning May 1, 2022, employers will no longer be allowed to accept expired List B documents.³ The Form I-9 remote completion flexibility is not impacted by this announcement and is currently set to end on April 30, 2022.⁴

This White Paper will walk employers through the changes regarding Forms I-9 completed after April 30, 2022 and the steps required to bring Forms I-9 completed using expired List B documents into compliance by July 31, 2022.

I. NEW FORMS I-9 COMPLETED AFTER APRIL 30, 2022

USCIS has made it clear that Forms I-9 processed after April 30, 2022 cannot be completed using an expired List B document. This is the result of issuing agencies having either reopened or provided sufficient alternatives to in-person renewal, such as allowing renewal via mail or internet. As such, USCIS will be reverting back to the long-standing rule that, absent narrow exceptions, all documents used to complete Forms I-9 must be unexpired.

II. REMEDIATING FORMS I-9 COMPLETED UNDER THE EXPIRED DOCUMENT EXCEPTION

The expired document exception (May 1, 2020 through May 1, 2022) allowed employers to accept a List B document that expired on or after March 1, 2020. With the impending termination of this exception, USCIS has stated that all Forms I-9 completed using the expired document exception must be reviewed and in some cases, reverified, using unexpired documents by July 31, 2022.

¹ See [Form M-274](#), at § 4.4, 6.4.2, § 6.5, § 6.6, § 6.7.

² [COVID-19 Temporary Policy for List B Identity Documents | USCIS](#)

³ [DHS To End COVID-19 Temporary Policy for Expired List B Identity Documents | USCIS](#)

⁴ [DHS Extends Form I-9 Requirement Flexibility \(Effective January 1, 2022\) | USCIS](#)

A. Confirming COVID-19 Notation in “Additional Information” Field

When reviewing Forms I-9 for compliance and possible remediation, employers should note whether the required “COVID-19” notation was entered into the “Additional Information” field of Section 2 during initial completion using an expired document. If not, employers are advised to add this notation now. If the notation is being added to a paper Form I-9, employers should date and initial the change. For a Form I-9 completed under the expired document exception, Section 2 should reflect Figure 1 but also be initialed and dated.

OR	List B Identity	AND
Document Title ?	Driver's license issued by state/territory	Document
Issuing Authority ?	Pennsylvania	Issuing Aut
Document Number ?	12 12 1234	Document
Expiration Date (if any) (mm/dd/yyyy) ?	01/03/2022	Expiration
Additional Information ?		
"COVID-19"		

Figure 1: “COVID-19” notation placed in the Additional Information field

Assuming that the Form I-9 in question has the appropriate notation in the “Additional Information” field (from either the initial completion *or* entered now to bring the Form I-9 into compliance), USCIS has instructed employers to take one of three courses of action, as described in the chart below.

If	Then
If the employee has been terminated	Take no action on the Form I-9
If the List B document was automatically extended by the issuing authority so that it was valid on the date of Form I-9 completion	Take no action because the document is considered unexpired at the time of completion
If the List B document was expired at the time of completion <i>and</i> the employee is still employed	Have the employee present an unexpired document that establishes identity (either List A or B) and record that information in the Additional Information field of Section 2

B. Recording Termination Dates of Former Employees

Employers must retain Form I-9 for either three years from the date of hire *or* one year from the date of termination, whichever is later. As a best practice, **BIG** recommends that employers record the employee's termination date in the "Additional Information" field of Section 2 to ensure timely destruction. Additionally, an Immigration and Customs Enforcement (ICE) auditor will be able to easily cross-reference the date of termination in the event of an audit. If during review, an employer comes across a terminated employee's Form I-9 that was completed per the terms of the expired document exception, it would be considered good measure to add the termination date in the "Additional Information" field. Updating this field with the termination date supports compliant practices, possible remediation (in case an

internal audit uncovers deficiencies) and justification to an auditor as to why any required expired document follow-up was not completed.

C. Driver's License Extensions by State

BIG has compiled a chart of driver's license extensions by state, which is available [here](#). This guide will assist in determining whether the List B document in question was "valid" (regardless of the expiration date on the face of the document) via automatic extension at the time of Form I-9 completion or whether it is considered expired.

D. Requesting and Recording Unexpired Documentation

If the employee is still actively employed *and* the document was expired on its face, and no automatic extension rendered the document unexpired at the time of Form I-9 completion, employers should meet

with the employee and request an identity document from either List A or List B. Employers should then record document details in the "Additional Information" field of Section 2. These details should include:

- document title;**
- issuing authority;**
- document number; and**
- expiration date.**

If completing the Form I-9 on paper, employers should also initial and date this annotation. While not mentioned by USCIS, it is a best practice to photocopy this document and retain it with the Form I-9 along with any documents used for Form I-9 completion. If there is a recording error, ICE will consider this omission a "technical" violation, subject to a notice and curing period. Excluding a photocopy is considered a "substantive" violation that is not subject to any notice and/or curing period.



When finished, a properly updated Form I-9 requiring remediation should reflect Figure 2.

R	List B Identity	AND
	Document Title [?] Driver's license issued by state/territory <input type="text" value=""/>	Documen
	Issuing Authority [?] Pennsylvania <input type="text" value=""/>	Issuing A
	Document Number [?] 12 12 1234	Documen
	Expiration Date (if any) (mm/dd/yyyy) [?] 01/03/2022	Expiration
<div style="border: 1px solid black; padding: 5px;"> <p>Additional Information [?] "COVID-19"</p> <p>Driver's License Pennsylvania Dept. of Transport. 89 89 9876 4/5/2025 </p> </div>		

Figure 2: Properly updated Form I-9 requiring remediation for expired List B documentation

III. CONCLUSION: MORE CHANGES TO COME

BIG believes the termination of the expired document exception is the first of many changes to come in the next few months as it pertains to Form I-9 completion and maintenance. The remote Form I-9 completion flexibilities (whereby an employee can email documents to the employer and complete the verification via video link) are still set to expire on April 30, 2022. The Form I-9 itself is set to be revised this summer, with the current version expiring in October, 2022.

*These changes can be complex and confusing at times, generating onboarding process and workflow challenges for employers. However, **BIG** has invested the time and resources to ensure we are fully prepared to assist our clients through the changes discussed in this White Paper as well as any forthcoming adjustments. Through our suite of services, enhanced technologies and expert staff, we can support clients through all aspects of the Form I-9 lifecycle.*