

Form I-9 Verification During EAD Production Delays Due to COVID-19

Due to the extraordinary and unprecedented COVID-19 public health emergency, the production of certain Employment Authorization Documents (Form I-766, EAD) is delayed. As a result, employees may use Form I-797, Notice of Action, with a Notice date on or after December 1, 2019 through and including August 20, 2020 informing an applicant of approval of an Application for Employment Authorization (Form I-765) as a Form I-9, Employment Eligibility Verification, List C #7 document that establishes employment authorization issued by the Department of Homeland Security pursuant to 8 C.F.R. 274a.2(b)(1)(v)(C)(7), even though the Notice states it is not evidence of employment authorization. Employees may present their Form I-797 Notice of Action showing approval of their I-765 application as a list C document for Form I-9 compliance until December 1, 2020.

THE I-797 NOTICE OF ACTION DESCRIBED ABOVE DOES NOT PROVE EVIDENCE OF IDENTITY OR SERVE AS A LIST A DOCUMENT ESTABLISHING BOTH IDENTITY AND EMPLOYMENT AUTHORIZATION OR A LIST B DOCUMENT ESTABLISHING IDENTITY FOR FORM I-9 PURPOSES.

For Form I-9 completion, employees who present a Form I-797 Notice of Action described above for new employment must also present their employer with an acceptable List B document that establishes identity. The Lists of Acceptable Documents is on Form I-9. Current employees who require reverification can present this Form I-797 Notice of Action as proof of employment authorization under List C.

By December 1, 2020, employers must reverify employees who presented this Form I-797 Notice of Action as a List C document. These employees will need to present their employers with new evidence of employment authorization from either List A or List C.

We encourage employers to accept new EADs presented by employees as soon as they receive them from USCIS prior to December 1, 2020, to satisfy the reverification requirement. However, it is the employees' choice whether to present their new EADs, or a different document from either List A or List C.

Last Reviewed/Updated: 08/19/2020