

PUBLICATION

Employers Can No Longer Accept Expired List B Documents Starting May 1, 2022

March 21, 2022

On March 17, the Department of Homeland Security (DHS) announced it would end the temporary policy allowing employers to accept expired List B documents for I-9 purposes. The policy was announced in early 2020 as part of the agency's efforts to extend flexibility to employers during the COVID-19 lockdowns. These temporary policies were last extended in late 2021, but this announcement could indicate DHS is ready to dispense with those measures, following the trend toward relaxing COVID restrictions nationwide.

How to Update the Form I-9

If the worker is still employed, the employer must have them present an unexpired document that establishes identity. This can be the renewed List B document, an alternative List B document, or a List A document. The document information should be recorded in the Additional Information box in Section 2 of the Form I-9, and initialed and dated by the person who inspected the document.

The employer should inspect the new identity document in the physical presence of the employee, unless all of the requirements for remote verification are met. As a part of its COVID-19 flexibility policies, DHS allows certain employers to inspect a worker's documents remotely if (1) the worker will work **exclusively** in a remote setting due to COVID-related precautions; (2) the workplace is operating **entirely** remotely at the time of hire. If the employer has **any** workers physically present at a work location, then the employer cannot avail itself of the remote verification option.

As many workplaces have returned at least some staff to on-site work, this is a good opportunity for employers who took advantage of remote verification flexibilities to ensure that their Forms I-9 are compliant with the policy. DHS has instructed that within three business days of resuming normal operations, employers must conduct an in-person verification of Form I-9 documents for any worker who was originally verified remotely, noting "documents physically examined" and adding the date of inspection to the Additional Information box in Section 2 of the Form I-9.

Deadline to Update the Form I-9

Employers will have until July 31, 2022, to update any Forms I-9 completed from March 20, 2020 to April 30, 2022, where a worker presented an expired List B document. Only workers who presented an expired List B document and are still working for the employer need to present an unexpired identity document to update their Form I-9 – employers are not required to take any action regarding workers who are no longer employed or whose identity document was automatically extended by the issuing authority at the time of hire.

If you have questions or need assistance, please contact [Meredith Doll](#) or any member of Baker Donelson's Immigration Team.