

# Procedure: 4.1.2p.

## Verifying Identity and Employment Eligibility

**Revised:** May 10, 2017; May 17, 2016; and September 28, 2001.

**Last Reviewed:** September 16, 2022; and May 10, 2017.

**Adopted:** September 28, 2001.



### **I. PURPOSE:**

According to applicable provisions of the federal Immigration and Nationality Act (INA), the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324 (a), as amended), and the Georgia Immigration Security and Compliance Act (O.C.G.A. §13-10-90 et. seq) all work units of the Technical College System of Georgia (TCSG) must verify both the identity and employment eligibility of new employees.

It is unlawful to knowingly hire an individual unauthorized to work in the United States; to hire any individual without complying with the noted identity and employment eligibility verification requirements; or, to continue the employment of an individual if a TCSG work unit knows or should know that the person is not authorized to work. Additionally, the INA prohibits employers from discriminating against individuals based on their citizenship or immigration status, or national origin in the Form I-9, Employment Eligibility Verification process.

The provisions of this procedure apply only to newly hired employees or those who return to State service after a standard break-in service. These provisions do not apply to promotions, demotions, transfers between TCSG work units, or an individual's transfer between state agencies, provided no break-in service has occurred.

### **II. RELATED AUTHORITY:**

8 U.S.C. 1324 – Immigration Reform and Control Act of 1986, as amended.

8 C.F.R. §274 – Control of Employment of Aliens Immigration and Nationality Act (INA), as amended.

28 C.F.R. §44.200 – Unfair Immigration-Related Employment Practices.

O.C.G.A. §13-10-90 et. seq – Georgia Immigration Security and Compliance Act State.

Personnel Board Rule 6 – Recruiting, Interviewing, and Hiring.

U.S. Citizenship and Immigration Services Privacy Act.

### **III. APPLICABILITY:**

All work units and Technical Colleges are associated with the Technical College System of Georgia.

### **IV. DEFINITIONS:**

**Break-in-Service:** a voluntary or involuntary separation from employment for at least

one (1) full business day.

**Document Abuse:** discriminatory documentary processes related to verifying employees' employment authorization and identity during the Form I-9 process.

**Employee:** according to 8 U.S.C. §274(a), the term includes an individual who provides services or labor for an employer for wages or other remuneration but not independent contractors.

**Public Employer:** according to the Georgia Immigration Security and Compliance Act, the term means every department, agency, or instrumentality of this state or a political subdivision of this state.

**TCSG Work Unit:** the TCSG System Office, Quick Start Headquarters, Quick Start Regional Office or training center, or an associated Technical College.

**Unauthorized Alien:** for purposes of this procedure, an alien who has not been lawfully admitted for permanent residence in the United States or who is not authorized to be employed under the provisions of the Immigration Reform and Control Act or by the authority of the Attorney General of the United States.

**Unfair Immigration-Related Employment Practice:** according to the provisions of 28 C.F.R § 44.200, an unfair immigration-related employment practice occurs when:

- (1) General - a person or other entity intentionally discriminates or engages in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) concerning hiring or recruitment or referral for a fee of the individual for employment or discharging the individual from employment because of their national origin or, in the case of a protected individual, their citizenship status;
- (2) Intimidation or Retaliation – a person or other entity may not intimidate, threaten, coerce or retaliate against any individual to interfere with any right or privilege secured under 8 U.S.C. §1324(b) or because an individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Section; and,
- (3) Documentation Abuses – a person or other entity requires [for satisfying the requirements of 8 U.S.C. §1324a(b)] more or different documents than are required or refuses to honor documents tendered that reasonably appear to be genuine and to relate to the individual.

#### **V. ATTACHMENTS:**

Attachment A – [INS Employment Eligibility Verification Form I-9.](#)

Attachment B – Instructions for Form I-9 – Employment Eligibility Verification.

## **VI. PROCEDURE:**

### **A. Verification Process:**

1. To establish employment eligibility, each new employee must complete a current version of the Department of Immigration and Naturalization (INS) Form I-9.
2. TCSG work units can use a paper Form I-9 (Attachment A) or the United States Customs and Immigration Services (USCIS) I-9 Smart Form and print a copy of the completed form. The Smart Form can be downloaded from the USCIS website ([www.uscis.gov](http://www.uscis.gov)) by selecting the I-9 Central link and the "I-9 Desktop Widget" option.
3. Within the meaning of the USCIS regulations, the Smart Form is not electronic. However, a functionality tool to better ensure that common completion errors on the Form I-9 (such as fields left blank, or fields filled out incorrectly) are avoided. Pre-populating Section 1 fields using an onboarding system/process is not permissible.
4. Form I-9 Basic Requirements:
  - a. All employees hired after November 6, 1986, must have a Form I-9 on file;
  - b. A copy of the Instructions for Form I-9 (Attachment B) must be provided to an employee to refer to while completing the form. NOTE: TCSG work units are not required to provide a copy that the employee may keep.
  - c. The Form I-9 may be completed before an employee's designated hire date, provided a conditional offer of employment has been made and accepted. For this procedure, the conditional offer must first have been finalized, in writing, by the employing TCSG work unit.
  - d. Section 1 of the Form I-9 must be completed by the employee or one or more preparers or translators no later than the start date of employment. No employee may be allowed to finish their first day of work without completing Section 1.
  - e. Section 2 of Form I-9 must be completed by a trained human resources representative no later than the end of the third business day after an employee begins work. NOTE: any employee who will work for three (3) business days or less may not be allowed to begin work until both Section 1 and 2 are completed and verified; and,
  - f. "N/A" should be inserted in all fields where no information is available;
5. Minors Under Age 18:
  - a. If a new employee is under eighteen (18) and cannot produce an acceptable List A or List B document, they may present a school record or report card, a clinic, doctor or hospital record, or daycare or nursery school record to satisfy documentation requirements and establish identify;

- b. If a minor cannot produce a List B document (to include a document referenced in Paragraph VI.A.5.a.), the Form I-9 should be completed as follows:
  1. In Section 1, a parent or legal guardian must complete the minor's information, check the box by the minor's status, enter "minor under age 18" in the space for the employee's signature and complete the Preparer or Translator Certification field.
  2. In Section 2, a parent or legal guardian enters "minor under age 18" under List B;
  3. the minor must present a List C document, and either they or the parent/legal guardian enters the document presented on the List C field; and,
  4. The human resources representative should add the employee info from Section 1 and complete the Certification field in the same manner for all newly hired employees.

**B. Completing Section 1:**

1. Each employee must complete all associated fields, including U.S. Social Security Number, given that the TCSG participates in the E-Verify Program. NOTE: if an employee has not yet been issued a Social Security Number, a human resources representative may contact E-Verify at 888-464-4218 or [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify) for assistance in completing this field;
2. Each employee must sign and date the form, and if a preparer or translator does not assist the employee, the associated box in the Preparer or Translator Certification field must be checked;
3. Suppose a preparer or translator assists an employee. In that case, they must check the appropriate block in the Preparer /or Translator Certification field, add the required information, and sign and date the certification. NOTE: The date the employee enters next to their signature must match the date the preparer or translator signed the form;
4. If more than one preparer or translator assists the employee in completing a paper form, the Form I-9 Supplement, Section 1 – Preparer or Translator Certification should be used to document everyone's participation;
5. If more than one preparer or translator assists the employee and the Smart Form is used, the number of certification areas needed should be selected from the dropdown menu. An additional page will be generated for each providing assistance, and each preparer or translator must complete, sign and date a separate certification area;
6. All completed certification documents must be attached to the completed Form I-9; and,

7. The human resources representative should review all information on the completed Form I-9 for completeness and note whether an employee indicated that their employment authorization would expire, as this may require verification later. NOTE: The employee's expiration date for employment authorization may or may not match the expiration date of the provided List A or List C document. If reverification is required, an earlier date should be used for these purposes.

**C. Completing Section 2:**

1. Each newly hired employee must provide a combination of original, unexpired documents establishing their identity and authorization to work in the United States within three (3) business days after their hire date.
2. Each employee may choose which document(s) to provide from the List of Acceptable Documents referenced on Form I-9.
3. In limited circumstances (e.g., when an employee has applied to replace a document that was lost, stolen, or damaged), they may present an acceptable receipt in place of a List A, B, or C document. A receipt for the application for an initial or renewal employment authorization document cannot be accepted; however, a receipt for the replacement of a lost, stolen, or damaged employment authorization document can be accepted, provided it is not for less than three days. NOTE: if a receipt is accepted, the actual document must be presented within ninety (90) calendar days
4. The human resources representative must physically examine and accept any document(s) that reasonably appear genuine and relate to the individual presenting it. After examining the documents, the human resources representative will certify and photocopy the documents and return the originals to the employee.
5. If the required document(s) or a receipt for the application for a replacement document(s) is/are not provided promptly, the employee must not be allowed to continue to work. In these instances, the employee may be released from employment or placed in a non-pay status for a limited period until valid document(s) or a receipt is provided, and Section 2 of the Form I-9 is completed and subsequently entered in and certified through the E-Verify System.
6. Information from the Form I-9 must be submitted to the Social Security Administration (SSA) and the Department of Homeland Security (DHS) via the E-Verify system within three (3) business days after each new employee's hire date/start date. Additionally, the designated human resources representative should monitor E-Verify alerts to ensure that all entries are completed promptly.

**D. Re-verification:**

1. Re-verification is not required for:
  - a. U.S. citizens and non-citizen nationals;
  - b. Lawful permanent residents who presented a Form I-551 (Permanent Resident or Alien Registration receipt card. NOTE: Form I-551 may contain no expiration date, a ten (10) year expiration date, or a two (2) year expiration date with conditions. Although a permanent resident with conditions can lose their status if they fail to remove these conditions, guidance from the United States Citizenship and Immigration Services (USCIS) provides that the employee is not subject to verification; and,
  - c. List B documents.
2. Other than the exceptions referenced in Paragraph VI.C.1., when an individual's employment authorization or employment authorization documentation expires, reverification is required through the completion of Section 3 of Form I-9. Reverification entails presenting a List A or List C document(s) (or acceptable receipt) which reflects continuous employment authorization on the date their initial document re: employment authorization or documentation expires, whichever is sooner.
3. To ensure that an affected employee remains authorized to work, a human resources representative should remind the employee of Paragraph VI.C.2 requirements at least ninety (90) calendar days before the expiration date of their current employment authorization document(s).
4. To complete Section 3, a human resources representative must:
  - a. Examine the unexpired document(s) to determine if it/they are genuine and pertain to the employee. If the document(s) do not reasonably appear to be genuine and pertain to the employee, they may present other documentation from List A or List C;
  - b. Record the document title, document number, and expiration date (if any); and,
  - c. Sign and date the form.
5. If Section 3 has previously been completed or the version of the form used for a previous verification is no longer valid, a new Form I-9 must be completed. Section 3 or the new form should be attached to the previously completed Form I-9 and, as applicable, a photocopy of the presented document(s).
6. If an employee cannot provide the required documentation, their employment with the TCSG work unit cannot continue.

**E. Rehires:**

1. Suppose an employee is rehired within three (3) years of the date that a

previous Form I-9 was completed. In that case, a human resources representative may either complete a new Form I-9 or Section 3 of the previously completed Form I-9.

2. If Section 3 is to be completed, the human resources representative must:
  - a. Confirm that the original Form I-9 pertains to the employee;
  - b. Determine if the employee is still authorized to work, including whether employment authorization documentation presented in Section 2 (List A or List C document[s]) has expired or has been auto extended. As applicable, use the reverification provisions of Paragraph VI.C. when completing Section 3;
  - c. If the employee remains authorized to work and their employment authorization documentation is still valid, enter the date of the rehire;
  - d. If the employee is no longer authorized to work or the employment authorization documentation has expired and requires reverification, request that the employee present unexpired document(s) only from List A or List C. Enter the document information and the date of rehire in the spaces provided. If the current version of Form I-9 is different from the previously completed Form I-9, Section 3 of the current version must be used; and,
  - e. Sign and date Section 3.  
NOTE: Section 3 includes three (3) spaces/fields in which the date must be entered as follows:
    - If a former employee is rehired, enter the rehire date that the employee begins work which could include a future date, if applicable, in block B;
    - If reverification is required, enter the date the employee's new work authorization document expires in block C; and,
    - When completing Section 3 for any reason, the date the Section is completed should be entered, followed by the required signature.
3. A new Form I-9 must be completed if the break-in service was more than three (3) years in length.

**F. Recording Name Changes and Other Identity Information of Current Employees:**

1. According to guidance from the USCIS, it is the practice of the Technical College System of Georgia (TCSG) to maintain correct information on each employee's Form I-9 and take reasonable steps to be assured of its employee's identity if there has been a legal name change.
2. To this end, if a TCSG work unit learns of or is informed directly by an employee of a legal name change during an active period, the employee will be asked to provide supporting documentation of the legal name change (e.g., a photocopy of a marriage license). Section 3 of Form I-9 should be updated in

the same manner as outlined in Paragraph VI.C. The supporting documentation should be attached and retained with the updated Form I-9.

3. If an employee informs a TCSG work unit that their identity is different from the time the Form I-9 was previously completed (e.g., a name, date of birth, or Social Security Number) and is unable to provide evidence linking the latest information to the identity previously use, the work unit should:
  - a. Complete a new Form I-9;
  - b. write the original hire date in "The employee's first day of employment (MM/DD/YYYY) space in Section 2; and,
  - c. attach the new Form I-9 to the previously completed Form I-9.

NOTE: if the Section 1 information has not changed, but the employee has offered additional evidence of work authorization, the human resources representative should examine the documentation to determine if it is genuine and relates to the employee presenting it. If true, the representative should complete Section 3 of the previous Form I-9. In addition, if the current version of the Form differs from the previously completed Form I-9, the representative must complete Section 3 of the current version of the Form I-9.

**G. Correcting Errors on the Form I-9:**

1. A TCSG work unit must promptly correct mistakes on Form I-9 or information entered in the E-Verify system without obscuring the error or concealing that a mistake was made.
2. Common mistakes in Section 1 that are correctable include: the employee did not check the box regarding their authorization to work in the U.S.; a missing Social Security Number; the employee failed to check or fully complete the Citizenship Status block, and the employee did not sign or date the form.
3. Common mistakes in Section 2 that are correctable include no start date listed in the certification box; issuing authority document number or expiration date missing for identity and/or work authorization document(s); too many or too few documents listed; and employer's signature box incomplete.
4. If it is determined that an employee completed Section 1 after commencing employment, the error is not correctable.
5. Making Corrections:
  - a. The employee must correct Section 1 errors;
  - b. A human resources representative must complete Section 2 errors;
  - c. The error should be "struck through." NOTE: the use of a correction fluid such as "White Out to obscure an error is not permissible;



- d. All corrections should be initialed, dated, and include the term or statement noting why the error occurred or, in the event of a self-audit, "Per Self Audit;"
- e. To correct multiple recording errors, it is permissible to complete a new Section 1 or 2 and attach the document to the old Form I-9 with notations as to why a new Section was completed; and,
- f. To correct significant errors such as accepting an unacceptable document, a new Form I-9 may be completed with notations as to the reason for this action. The new form should be attached to the old form.

**H. Missing Form:**

- 1. If it is determined that a Form I-9 is missing for a current employee, a new form should be promptly completed;
- 2. The employee should complete Section 1. A human resources representative should complete Section 2, insert the original hire date, and sign and add the current date to the "Today's Date" field;
- 3. A notation should be added as to why the new form was completed;
- 4. Suppose it is discovered that a terminated employee's Form I-9 is missing, and the discovery is made within the established retention period referenced in Paragraph VII. In that case, the former employee may be contacted to complete a new form using the current date noted above. If a new form is not completed, a notation should be made regarding these circumstances if a formal inspection of these documents occurs.

**I. Form I-9 Use and Access:**

- 1. According to the USCIS Privacy Act, Form I-9 information will be used by employers as a record of their basis for determining an employee's eligibility to work in the United States. Therefore, an employer must retain the form for the required period and make it available for inspection by authorized individuals of the Department of Homeland Security, Department of Labor, and the Immigrant and Employee Rights Section (IER) of the Department of Justice.
- 2. A completed Form I-9, as well as all attached document(s), may not be accessed or used by a TCSG work unit for any purpose not associated with compliance with the provisions of this procedure, the USCIS Privacy Act, and accompanying state and federal law.

**J. Inspection:**

- 1. Officials from the Department of Homeland Security, employees of the Department of Labor, or employees of the IER Section of the Department of Justice (OSC) may inspect an employer's Form I-9.
- 2. Each agency/office generally provides employers a minimum of three (3)

business days' notice (in person or by certified U.S. mail) prior to any such inspection; however, a subpoena or warrant may be used to obtain the forms without providing a three (3) day notice period.

3. Upon request, a TCSG work unit must make Forms I-9 available at the location designated by DHS, DOL, or the IER.

#### **K. Unlawful Discrimination**

1. The anti-discrimination provision of the Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:
  - a. Citizenship or immigration status discrimination concerning hiring, firing, and recruitment (or referral for a fee);
  - b. National origin discrimination concerning hiring, firing, and recruitment (or referral for a fee). NOTE: the EEOC has jurisdiction over employers with fifteen (15) or more employees;
  - c. unfair documentary practices during the Form I-9 process (i.e., document abuse); and,
  - d. retaliation/Intimidation.
2. In application, the anti-discrimination provisions referenced in Paragraph VI.K.1. require all TCSG work units must treat individuals equally in recruiting, hiring, and firing (and other disciplinary action processes) and when verifying employment authorization and identity during the Form I-9 process as follows:
  - a. U.S. citizens, recent permanent residents, temporary residents, asylees, and refugees are protected from citizenship status discrimination. Exceptions to this prohibition pertain to permanent residents who do not apply for naturalization within six (6) months of eligibility and those referenced in Paragraph VI.G.3.d;
  - b. U.S. citizens, lawful permanent residents, and other work authorized individuals are protected from national origin discrimination because of their place of birth, country of origin, ancestry, native language, accent, or the perception that they look or sound "foreign;"
  - c. Covered employers may not request more or different documents than are required to verify employment eligibility, reject reasonably genuine-looking documents, or specify certain documents over others with the purpose or intent of discriminating or because of citizenship status or national origin; and,
  - d. Individuals who file charges with the Immigrant Employee Rights (IER) Section of the Department of Justice, who cooperate with an IER

(or EEOC) investigation, who contest actions that may constitute unfair documentary practices or discrimination based on citizenship or immigration status or national origin or, who assert their rights under the INA anti-discrimination provisions are protected from intimidation, retaliation, threats, and coercion.

3. Additional documentary practices a TCSG work unit should avoid:
  - a. Requesting to see employment authorization documents before an applicant is hired and subsequently completes a Form I-9;
  - b. Refusing to hire an individual because a document has a future expiration date; and,
  - c. Requiring a specific document when re-verifying that an individual is authorized to work.
4. Requiring that the selected candidate for a given position be a U.S. citizen is not permitted unless U.S. citizenship is required to comply with the law, regulation, or executive order; is required by or federal, state, or local government contract; or, when the U.S. Attorney General determines that this requirement is essential for an employer to do business with an agency or department of the Federal, State or local government.
5. According to applicable provisions of 28 C.F.R. § 44.200, it is not an unfair immigration-related employment practice for a TCSG work unit to select a U.S. citizen or noncitizen national over an equally qualified alien to fill a specific position; however, a TCSG work unit should not adopt a practice of always preferring citizens or a noncitizen national over authorized alien.

#### **VII. RECORDS RETENTION:**

- A.** According to federal law, acceptable formats for storing/retaining Form I-9 include the original paper Form I-9, a copy of the original, signed Form I-9 on microfilm or microfiche, or a copy of the original, signed Form I-9 in an electronic system.
- B.** A completed Form I-9 with accompanying document(s) may be maintained in an employee's official personnel file; however, according to USCIS guidance, the preferred method is to maintain these documents in a separate file to provide for easy retrieval in the event of a federal agency inspection and to ensure better that adequate safeguards are in place to protect employee information.
- C.** According to the requirements of the Georgia Archives Retention Schedule for State Government Paper and Electronic Records and corresponding federal law, every Form I-9 and photocopied documents shall be maintained for three (3) years after the date of hire or one (1) year after the date of employment ends, whichever is later. After retention requirements are met, Form I-9 should be purged/shredded.