

USCIS Takes Emergency Step for Employment Verification

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The U.S. Citizenship and Immigration Services has come up with a temporary solution for companies dealing with extreme delays on certain documents that approve employees for work authorization.

The [USCIS has approved a measure](#) that allows an employee to immediately use a "Notice of Action" (Form I-797) approving their application for employment authorization as a Form I-9, Employment Eligibility Verification, List C document.

While the form clearly states it is not to be used as evidence of employment authorization, USCIS hopes the temporary fix will alleviate delay issues employees have encountered in waiting for production of the official "Employment Authorization Document" or EAD card.

The agency said the delays in producing the cards are "due to the extraordinary and unprecedented COVID-19 public health emergency." The change is immediate, and is retroactive for Form I-797, Notice of Action dated, after December 1, 2019, informing an applicant of the approval of an Application for Employment Authorization.

The temporary use of the Notice of Action runs through December 1, 2020.

USCIS makes it clear that while the Form I-797 Notice of Action may now serve as a temporary employment authorization, it does not serve as a List A document establishing both identity and employment authorization or a List B document establishing identity for Form I-9 purposes.

According to the USCIS, for Form I-9 completion, employees who present the Form I-797, Notice of Action approving new employment must also present their employer with an acceptable List B document that establishes identity. [Find the full list of acceptable documents here](#). Current employees who require reverification can present their approved Form I-797, Notice of Action as proof of employment authorization under List C.

Employers should keep a list of employees who used the Form I-797 as employment authorization as a List C document. By December 1, employers must again verify those employees with new evidence of employment authorization from either [List A or List C](#).

The USCIS said that it encourages employers to accept new EADs presented by employees as soon as they receive them from USCIS prior to December 1 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.

If you have any questions about this new qualification requirement for your employees, please [contact me](#) or any member of the [Barley Snyder Immigration Practice Group](#).

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