

# Form I-9 Internal Audit Step-by-Step Guide for Employers



## Purpose

This guide is designed to provide employers with a clear, practical, and legally compliant roadmap for conducting internal audits of Form I-9 records. It is intended to help organizations assess and strengthen their employment eligibility verification practices, while minimizing legal and financial exposure.

Recent years have seen a significant resurgence in **worksite enforcement activity by U.S. Immigration and Customs Enforcement (ICE)**. Under the current administration, there has been a marked increase in both **targeted I-9 inspections** and **civil enforcement actions**. Employers across industries—regardless of size—are experiencing greater scrutiny of their Form I-9 compliance, recordkeeping practices, and hiring procedures. Failing to properly complete, retain, or produce I-9 forms can result in substantial civil penalties and reputational harm.

This guide is aligned with the following federal authorities and official guidance:

- The employer sanctions and anti-discrimination provisions of the INA (8 U.S.C. §§ 1324a, 1324b)
- ICE's "[Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits](#)"
- ICE's "[Inspection of Form I-9](#)" [Fact Sheet](#)"

Although internal audits are not legally required, **they are considered a best practice** and demonstrate good-faith efforts toward compliance. When conducted thoughtfully and consistently, internal audits help employers identify and correct technical errors, address systemic issues, and better prepare for the possibility of an external government inspection. This guide outlines how to conduct those audits lawfully, fairly, and effectively.

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## Step 1: Plan the Internal Audit

**Reference:** ICE Internal Audit Guidance

- **Purpose:** Ensure I-9 compliance, not to target employees based on citizenship or national origin.
- **Scope:**
  - Audit *all* Forms I-9, or
  - Audit a *representative, neutrally selected sample* (e.g., by hire date, department).
- **Timing:** Ensure the audit's timing does not appear retaliatory (e.g., after a complaint or protected activity).

**Tip:** Document your purpose, scope, and neutral selection method at the outset.

## Step 2: Review Each Form I-9

**Reference:** ICE Internal Audit Guidance

- **Verify:**
  - Every current active employee has a Form I-9 completed.
  - Review that each impacted terminated employee had a completed Form I-9 (See Retention Rule).
- **Verify each Form I-9's:**
  - Section 1 was properly completed by the employee.

**Tip:** Record each error/omission for each Form I-9 on a Spread Sheet.

- Section 2 was properly completed by the employer within 3 business days of hire.
  - Section 3 (if applicable) was properly completed for reverifications.
- **Check:**
  - Documents recorded meet I-9 requirements that were valid at the time of hire (don't apply today's standards retroactively).
  - Completeness, accuracy, and presence of signatures and dates.
  - Completed on a valid unexpired version of the Form I-9 at the time of hire.

**Tip:** Record each error/omission for each Form I-9 on Spread Sheet.



## Step 3: Correct Errors Properly

**Reference:** ICE Internal Audit Guidance

- **Section 1 Errors:**
  - Only the *employee* can correct.
  - Employee should:
    - Draw a line through incorrect information.
    - Enter the correct information.
    - Initial and date the correction.
  - **If a deficiency is found and requires employee participation to correct:**
    - Inform the employee *privately*.
    - Provide a copy of their Form I-9 and any supporting documents.
    - Provide instructions for correcting deficiencies (see below Step 4).
    - Offer assistance (including providing language assistance if needed).

**Tip:** Set up a point of contact (HR or Compliance officer) to answer employee questions.

- **Section 2 or Section 3 Errors:**
  - Employer can correct:
    - Line through incorrect information.
    - Enter correct info.
    - Initial and date the correction.

**For multiple errors:** You may redo Section 2 or 3 on a new current version of the Form I-9, attach it to the original, and include a signed/dated explanation.

**Important:**

- Never use white-out or erase.
- Never backdate.
- Do not destroy old Forms I-9.

## Step 4: Address Missing Forms

**Reference:** ICE Internal Audit Guidance

- If Form I-9 is *missing entirely*:
  - Complete a new Form I-9 immediately.
  - State the *true date of hire* in Section 2 (do not backdate).
  - Attach a signed, dated explanation memo
- If Sections 1 or 2 are incomplete:
  - Complete the missing sections promptly.
  - Attach a signed, dated explanation memo.



## Step 5: Handling Non-Genuine or Inadequate Documents

**Reference:** ICE Internal Audit Guidance

- Accept documents that **reasonably appear genuine** and relate to the individual.
- **Do not:**
  - Assume invalidity based solely on photocopies.
  - Do NOT Demand specific documents (employees choose what to present from [the Lists of Acceptable Documents](#)).

If concerns arise:

- Privately ask employee to present alternative, acceptable documentation.
- Document the discussion neutrally and factually.
- Consult your Immigration Counsel.

## Step 6: Special Cases (E-Verify, Tips, Past Violations)

**Reference:** ICE Internal Audit Guidance

- **E-Verify Review:**
  - Confirm E-Verify enrollment date.
  - Check that E-Verify cases were created for all employees hired on or after enrollment.
  - Address any inadvertent omissions promptly. Do not create E-Verify cases retroactively unless an *inadvertent* failure occurred.
  - Ensure proper handling of Tentative Non-confirmations (TNCs)

**Tip:** If you are a federal contractor or you are located in a state that requires E-Verify enrollment, contact counsel to ensure compliance.

## Step 7: Documentation and Retention

**Reference:** [ICE I-9 Inspection Process](#)

- **Retention Rules:**
  - **For Terminated Employees:** Keep Forms I-9 for **3 years after hire date** or **1 year after termination**, whichever is later.
- **Audit Records:**
  - Maintain documentation of the audit process, corrections made, communications with employees, and justifications.



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- You may consider drafting a memo that describes your internal audit activities. Review with counsel.

**Tip:** If the employer consults legal counsel during the audit, mark related documents and communications as 'Attorney-Client Privileged' where applicable.

## Step 8: Finalize and Monitor

- Ensure all deficiencies are addressed.
- Track pending employee responses.
- Implement ongoing training for HR and managers.
- Set up a schedule for **regular audits** (e.g., quarterly, or annually).

## Important Reminders:

- Avoid discriminatory or retaliatory practices at all stages.
- Do not use Social Security Number Verification Service (SSNVS) for I-9 audits.
- Document every corrective action and interaction neutrally.
- If employees need time to correct discrepancies, allow a **reasonable** period based on circumstances.

## Form I-9 Fines and Penalties for:

### **Form I-9 Paperwork (technical and substantive) Violations**

- Employers may face fines for failing to properly complete, retain, or make Forms I-9 available for inspection. The penalties per violation are:
  - Minimum: \$288
  - Maximum: \$2,861

### **Knowingly Hiring or Continuing to Employ Unauthorized Workers**

- First Offense: \$716 to \$5,724 per unauthorized worker
- Second Offense: \$5,724 to \$14,308 per unauthorized worker
- Third or Subsequent Offense: \$8,586 to \$28,619 per unauthorized worker

### **Document Fraud and Discrimination**

- Document Fraud (First Offense): \$590 to \$4,730 per violation
- Document Fraud (Subsequent Offense): \$4,730 to \$11,823 per violation
- Unfair Immigration-Related Employment Practices
  - (First Offense): \$575 to \$4,610 per individual
  - (Second Offense): \$4,610 to \$11,524 per individual
  - (Third or Subsequent Offense): \$6,913 to \$23,048 per individual



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## Factors That May Influence Penalty Amounts

- ICE considers several factors when determining the final penalty amount:
  - Size of the business
  - Good faith efforts to comply
  - Seriousness of the violations
  - Involvement of unauthorized workers
  - History of previous violations
  - Each of these factors can increase or decrease the base fine by up to 5%, leading to a potential total adjustment of up to 25%

## E-Verify Violations

While E-Verify itself does not impose fines, misuse can lead to penalties under related federal statutes:

- **Failure to Notify DHS of Continued Employment After Final Nonconfirmation (FNC):** Employers enrolled in E-Verify are required to notify the Department of Homeland Security (DHS) if they continue to employ an individual after receiving a Final Nonconfirmation. Failure to do so can result in civil penalties.
- **Misuse or Abuse of the E-Verify System:** Engaging in discriminatory practices, such as using E-Verify to pre-screen job applicants or selectively verifying employees based on citizenship status, can lead to investigations and penalties by the Department of Justice's Civil Rights Division.
- **State-Level Penalties:** Some states have enacted laws mandating the use of E-Verify for certain employers. Non-compliance with these state laws can result in penalties, including fines, probation, suspension, or even revocation of business licenses.
- **Federal Contractors:** If you are a federal contractor employer and your E-Verify account is terminated due to misuse, abuse, discrimination, or fraud, or for behaviors that violate privacy laws, security breaches, or other legal requirements, it may impact your contractual obligations with the federal government.

## Recommendations for Employers

Given the federal government's renewed focus on worksite enforcement, including heightened Form I-9 inspections and increased scrutiny of employment eligibility practices, employers should adopt proactive compliance strategies. The following recommendations reflect best practices consistent with ICE guidance and the Immigration and Nationality Act (INA):

- **Conduct Regular Internal Audits:** Establish a consistent schedule to review and audit Form I-9 records. Identify and correct technical or substantive errors and



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document remediation efforts. Proactive audits demonstrate good-faith compliance and can help mitigate penalties during an ICE inspection.

- **Maintain Accurate and Compliant Records:** Ensure that all Forms I-9 are properly completed, signed, and retained in accordance with federal regulations—specifically for three years after the date of hire or one year after termination, whichever is later.
- **Adhere to Proper E-Verify Practices (for enrolled employers):** Use E-Verify only after the Form I-9 is completed and an offer of employment has been accepted.
  - Avoid Discriminatory Practices: Do not use E-Verify to pre-screen applicants or selectively verify based on citizenship or national origin.
  - Respond Appropriately to Tentative Nonconfirmations (TNCs): Promptly inform the employee, allow time to contest, and avoid adverse action while the case is pending.
  - Monitor State Mandates: Ensure full compliance with state-specific E-Verify requirements where applicable.
- **Train HR and Compliance Personnel:** Provide thorough, ongoing training to those responsible for Form I-9 completion, reverification, and retention. A well-informed HR team is the first line of defense in avoiding avoidable compliance missteps.

In addition, HR may want to review our previous resource [Form I-9: Common Mistakes and How to Avoid Them](#) to help address systemic issues.
- **Consult Legal Counsel as Needed:** When questions arise regarding complex I-9 corrections, E-Verify procedures, or audit findings, consult with immigration or employment counsel. Communications with counsel and related documentation should be marked “**Attorney-Client Privileged**” when appropriate.

By implementing these practices and following ICE’s official guidance, employers can significantly reduce the risk of costly fines, operational disruptions, and reputational damage. More importantly, a proactive compliance posture reflects a **good-faith effort**, which can weigh favorably in the event of a government investigation or audit.



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## Important Notice

This flyer is intended for **general informational purposes only** and does **not constitute legal advice**.

You should not act or rely on any information contained in this flyer without first consulting a **licensed, competent immigration attorney** who can assess your specific situation.

**Contact any member of Constangy's [Immigration Team](#) for further guidance.**

